



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-40-2020 (O&M)
DECIDED ON: 24.09.2024

SUKHWINDER SINGH

.....APPLICANT/APPELLANT

VERSUS

PARMOD KUMAR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Varun Katyal, Advocate
for the applicant/appellant.

SANDEEP MOUDGIL, J (ORAL)

CRM-42-2020

Prayer in this application is for condonation of delay of 69 days
in filing the accompanying application.

In view of the assertions made in the application, the same is
allowed subject to all just exceptions. Delay of 69 days in filing the
accompanying application is condoned.

The application stands disposed of.

CRM-A-40-2020

1. By filing the present appeal, under Section 378(4) Cr.P.C., the
applicant/appellant has assailed the judgment dated 06.07.2019, passed by
the Judicial Magistrate Ist Class, Dhuri, Punjab, dismissing the complaint
No.357 dated 22.08.2016 and acquitting the respondent-accused therein of
the notice of accusation served upon him under Section 138 of the
Negotiable Instruments Act (for short 'the Act').

2. Briefly put forth, the facts of the case are that the complainant alleges that the accused-respondent issued cheque No.006759 on 25.07.2016 for a sum of Rs.4,00,000/- drawn on Axis Bank, Dhuri Branch in favour of the complainant in his account No.912010029493602 to discharge his debt. However, when the complainant presented the said cheque to Axis Bank, Dhuri Branch for payment, it was dishonoured on 26.07.2016 with remarks "Insufficient Funds". After receiving an information from the bank with regard to dishonour of the said cheque, complainant sent a registered legal notice on 29.07.2016 and the said notice was duly received. The accused-respondent wilfully and intentionally issued the cheque to the complainant knowing fully well that there is no amount in his account equivalent to the amount of the cheque in question and defrauded the complainant as well as Bank. Hence, the present complaint was filed and the same was dismissed by the trial Court vide judgment dated 06.07.2019.

3. Learned counsel for the appellant contends that the trial Court has failed to appreciate the fact that accused-respondent never disputed issuing, signing and filling of the cheque in question, which is sufficient evidence for conviction and has also failed to consider Ex. C-5, where the respondent-accused admits liability towards the complainant and moreover, the respondent-accused did not dispute the execution of Ex.C-5 thereby substantiating that the disputed cheque was indeed issued to settle a legitimate and enforceable debt/liability.

4. He further contends that the issuance of cheque by the accused-respondent itself raises the presumption that the cheque has been issued in discharge of a legally enforceable debt.

5. It is contended on behalf of the appellant that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside.

6. It is further contended that the trial Court gave the benefit of acquittal to the respondent-accused on the ground that there are certain discrepancies in the version of the complainant, which culminated into being the defence of accused probable and trustworthy. Such an erroneous finding deserves to be set aside as the trial Court has utterly failed to appreciate the well proven oral as well documentary evidence of the complainant.

7. It is further contended that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque. It is well settled position in law that once an accused admits his signatures on the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but inspite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 06.07.2019 is liable to be set aside.

8. Heard.

9. I have perused the impugned judgment carefully and have also meticulously gone into the findings recorded by the trial Court. Upon perusal of the same, I do not find any perversity or illegality therein. As the accused under Section 313 Cr.PC has denied the incriminating material

against him. Furthermore, the complainant has failed to lead any evidence before the trial Court as to in which capacity he has lended the money to the accused-respondent wherein he has denied any kind of relationship with him besides he also stated that he had lended the money to the accused without any interest, which is highly improbable. Also the income tax returns of the applicant/appellant had only remained between Rs.2,60,000/- to 3,15,000/- which indicates that the applicant/appellant was not in a position to advance such a heavy amount of money to the accused without any rate of interest. Hence, it can be said that the applicant-appellant has grossly failed to prove that the cheque in question was issued qua discharge of any legally enforceable debt and consequently, he fails to prove the necessary ingredients to bring home guilt of accused under Section 138 of the N.I. Act, 1881. The respondent has successfully rebutted the presumption under Section 139 of the N.I. Act, 1881 and as such the judgment of acquittal has been rightly passed by the learned Court below.

10. It is a settled law as held in **C. Antony v. K.G. Raghavan Nair, 2002(4) RCR(Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

11. On perusal of the judgment passed by the trial Court dated 06.07.2019, this Court is of the considered view that the said judgment is well reasoned and is based upon proper appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court,

cannot be said to be faulty, contrary to law or requiring any interference by this Court. The accused-respondent has been duly able to rebut the presumption under Section 139 of the N.I. Act, 1881 and as such, he has rightly been acquitted of the notice of accusation served upon him.

- 12. Accordingly, the leave to appeal stands declined.
- 13. Dismissed.

24.09.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No