110 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1626-2024 (O&M)
Date of Decision: 10.12.2024

Rajesh Nain ..... Applicant

Versus

Kishawari ....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Applicant- Rajesh Nain in person.

Rajesh Bhardwaj, J.

CRM-48217-2024

For the reasons mentioned in the application, the same is allowed. The delay of 28 days in filing the application is condoned.

Main case

1. The applicant has filed the application under Section 378(4) Cr.P.C. for grant of leave to file an appeal against the impugned order dated 06.09.2024 passed by the learned JMIC, Jind, whereby, the trial Court has acquitted the respondent accused in the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short,'the Act').

2. Succinctly, facts of the case are that the applicant-complainant filed a complaint against the respondent-accused on the ground that on 01.07.2013, the accused had approached him alongwith her husband with a request to borrow a loan of Rs.1,50,000/- on monthly interest. The accused and her husband had jointly executed a promissory-note in favour of the complainant on 01.07.2013 in the acknowledgment of this loan of Rs.1,50,000/- with interest @ 3% per month and penalty @ 2% per month. As the accused and her husband remained irregular in making the payment,

then after repeated warnings, the accused issued a cheque on 07.05.2017 for an amount of Rs.1,50,000/- drawn at Syndicate Bank, Gohana Road, Jind Branch. The calculation receipt reflects an outstanding interest amount of Rs.1,42,110/- as on 31.05.2017. On the presentation of the cheque, the same was dishonoured with a remark "fund insufficient". Thereafter, the complainant issued a legal notice dated 13.07.2017, but the accused did not make the payment within the statutory period of 15 days of receipt of the notice. Hence, the complaint was filed under Section 138 of the Act. Preliminary evidence was led by the complainant and on appreciation of the same, the respondent-accused was summoned. Both the sides led their respective evidence. On appreciation of the evidence led by both the sides and hearing the arguments, learned trial Court found no merit in the complaint and hence, acquitted the respondent-accused vide impugned order dated 06.09.2024. Hence, the applicant has approached this Court by way of filing the present application for grant of leave to file appeal.

3. The applicant, namely, Rajesh Nain, who is present in person, was given offer by this Court for providing him counsel from the legal aid. However, he has submitted before this Court that he has appeared before the trial Court in person for himself and he wants to argue the present leave to appeal by himself.

4. The applicant has vehemently contended before this Court that the respondent-accused alongwith her husband had borrowed a loan from him, for which a cheque of Rs.1,50,000/- signed by the respondent, was given as discharge of the liability. However, on presentation of the same, the cheque was dishonoured and despite having been issued the legal notice,

the amount was not paid by the accused. He has submitted that he led evidence in support of his contentions, which was sufficient enough to meet the ingredients of Section 138 of the Act. However, learned trial Court has failed to appreciate the same and thus, has drawn a wrong conclusion in acquitting the respondent-accused. He has submitted that the cheque issued was admitted by the respondent to have been issued by herself and that in itself is sufficient enough to prove the case under Section 138 of the Act against her. However, learned trial Court has rejected the same on the grounds, where are unsustainable in the eyes of law. He, thus, submits that the impugned order being perverse in nature, deserves to be set aside by granting leave to appeal.

5. After hearing the applicant and perusing the record, it is apparent that the main thrust of the applicant is that the accused had given a cheque of Rs.1,50,000/- signed by her to him and thus, this in itself was sufficient for convicting the accused by the trial Court. On repeatedly asking by this Court to show the evidence produced by him in support of the loan given by him to the respondent, the applicant had admitted that no such evidence was led specifying the amount and date of loan given to the respondent. Learned trial Court has appreciated the evidence thread bear and has given the findings on all the issues raised before it. It has been found that the applicant had contended that a joint promissory-note was executed by the respondent and her husband, however, the same was never produced in evidence led before the trial Court. The amount claimed was also found in excess of the alleged liability towards the accused. It had been contended that after the dishonour of the cheque, the legal notice was issued

by the complainant, but no such evidence was led that this demand notice was ever received by the respondent-accused. The respondent specifically objected to the financial capacity of the applicant, but during the cross-examination, the applicant refused to answer the same, rather it was observed by the trial Court that he stated that the questions are irrelevant. The applicant claimed himself to be a Doctor but he could not prove even this fact that he was a Doctor by profession. This Court during the arguments specifically asked the applicant what evidence he led for claiming himself a Doctor, but he simply answered that he remained in Ganga Ram Hospital, Delhi. A perusal of the findings arrived at by the trial Court shows that the applicant did not even produce any ITR for substantiating his capacity to advance the loan. He has filed not only the present complaint, but various other complaints against different persons. For the prosecution of a person in the proceedings under Section 138 of the Act, which are criminal in nature, conclusion cannot be arrived on the basis of presumptions and assumptions. As per the settled principles of law, the benefit of doubt always lies in favour of the accused. As per law settled, the appeal against conviction and that of against acquittal rests entirely on different pedestal. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per the law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there lies double presumption of innocence in his favour. Hence, an Appellate Court should not disturb the findings of acquittal arrived at by the trial Court in a cavalier manner and it is only in case of perversity of the findings, the Appellate Court should interfere in the acquittal order passed by the trial Court. In **<u>Jafarudheen and others vs State of Kerala</u>** 2022 SCC Online SC 495, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:

> "25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

6. Weighing the facts and circumstances of the present case on the anvil of law settled, this Court finds no perversity in the order passed by the trial Court. Resultantly, the present application for grant of leave to appeal is dismissed.

(RAJESH BHARDWAJ)
JUDGE

10.12.2024
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No