2025:PHHC:076193

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

138

CRM-A-1185-MA-2014
Date of Decision: 27.05.2025

OM PARKASH

…..APPELLANT

Versus

KUL BAHADUR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Deepsikha, Advocate for
Mr. Sandeep Goyat, Advocate
for the appellant.

Ms. Monika Khatri, Advocate for
Mr. Vivek Khatri, Advocate
for the respondent.

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SANDEEP MOUDGIL, J (ORAL)

1. The present appeal has been preferred by the appellant under Section 378(4) Cr.P.C, against the judgment dated 20.05.2014 passed by the Judicial Magistrate Ist Class, Hisar, whereby the complaint filed by the appellant stands dismissed and the respondent-accused stands acquitted of the charges framed against him under section 138 of the Negotiable Instruments Act (for short ' the Act').

2. Factual Matrix of the case leading to the filing of present petition unfolds as that the appellant/complainant and the accused were known to each other as both were employees of CCS HAU, Hisar, and shared cordial visiting

terms. The accused had borrowed a sum of Rs.1,10,000 (Rupees One Lakh Ten Thousand only) from the appellant/complainant and had assured repayment of the said amount. In January 2011, when the appellant/complainant demanded the repayment, the accused, in discharge of an existing, outstanding, and legally enforceable liability, issued a cheque bearing No. 276014 dated 15.01.2011 for ₹1,10,000 (Rupees One Lakh Twenty Thousand only), drawn on State Bank of India, Hisar, in favour of the complainant. However, upon presentation, the cheque was dishonoured by the drawer's bank with the remarks "Payment stopped by drawer" vide bank return memo dated 21.01.2011. Despite receiving a legal notice dated 02.02.2011, the accused failed to make the payment within the stipulated period of 15 days and therefore, the present complaint was filed.

3. It is contended 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. It is further contended that the trial Court has wrongly observed that the complainant/appellant 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.

4. It is further contended that the trial Court erred in observing that the complainant/appellant stated during cross-examination that the accused borrowed only ₹80,000/-, leading to an incorrect finding of contradiction in the

complainant's version. The appellant had clearly stated both in the complaint and during evidence that the accused had taken ₹1,10,000/-, which the Trial Court wrongly ignored. She further contends that the Trial Court wrongly held that the complainant failed to mention the date, time, and place of the transaction, however, he had clearly deposed that the amount was given around 2½ years ago.

5. It has been further contended that the Trial Court also erred in concluding that the appellant lacked the financial capacity to lend ₹1,10,000/-, however, he was earning ₹25,000/- per month as a university employee and could reasonably have saved and advanced this amount. She further asserts that because of the close relationship between the complainant/appellant and accused, it was not considered necessary to have a written agreement. Therefore, the impugned judgment is legally and factually unsustainable and deserves to be set aside.

6. On the other hand, learned counsel for the respondent contends that the judgment passed by the Trial Court is correct and justified, as the complainant/appellant failed to establish the loan transaction advanced to the accused, for which no written document or promissory note was produced, and the complainant was unable to specify the date, time, or place when the loan was allegedly given to the accused.

7. I have heard learned counsel for the parties and gone through the record.

8. From the perusal of the judgment passed the trial court, it is evident that in the statement under Section 313 Cr.P.C., the accused-

respondent has taken a stand that he took loan from one Rohtash and issued three blank cheques duly signed as security to him and repaid the said loan but Rohtash did not return his cheques and handed over the cheques in question to the complainant, who misuse the said cheques by filing the present complaint. In order to prove his stand, the respondent-accused has examined DW-1 namely Om Parkash and DW-3 namely Lal Chand, retired Sub-Inspector, who deposed in his cross-examination that during inquiry he recorded the statements of Om Parkash Ex. DW4/A, statement of Rajbir DW4/B, statement of Kul Bahadur Ex. DW4/F and statement of Rohtash Ex. DX/A. Rohtash in his statement stated that the loan was taken by Kul Bahadur from him.

9. This court finds no reason to disbelieve the contentions of the respondent since the appellant has failed to prove that the cheque was issued against the legally enforceable debt and the defence put by the accused is supported by substantial proof and the accused has been able to raise a cogent doubt regarding the truthfulness of the issuance of the cheque in question and once the presumption under sections 118(A) and 139 of the Act of 1881 stands rebutted by the accused. The burden is upon the complainant to prove that the cheque was issued by the accused in discharge of any existing legal liability which the appellant/complainant has failed to prove.

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 20.05.2014, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

12. Accordingly, the leave to appeal stands declined.

13. Ordered accordingly.

(Sandeep Moudgil)
Judge

27.05.2025

Poonam Negi

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No