

2025:PHHC:071776



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM A-792-MA of 2014 (O&M)
Date of Decision: 15.05.2025

Subhash Chander

...Applicant

Versus

Sukhraj Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Arshdeep Singh Sandhawalia, Advocate for
Mr. Vikram Anand, Advocate, for the applicant.

None for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant the leave to appeal against the impugned judgment of conviction dated 26.03.2012 and the order of sentence dated 28.03.2024 passed by the Sub-Divisional Judicial Magistrate, Nakodar, whereby, the respondent has been acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**').

2. The applicant had filed a complaint before the trial Court by alleging that he was the proprietor of a firm M/s Hans Raj & Sons at village Mehatpur and was running the business of commission agent. Even, the respondent/accused was a customer of applicant and he used to sell his crop through complainant. He used to avail loan from the complainant from time to time and adjusted at the time of sale of the crop. On 30.06.2011, the parties settled their disputes and accounts and a sum of Rs. 4.90 lakhs including the interest was found outstanding against the respondent. Consequently, in order to discharge the complete liability, the respondent issued a cheque 890642 dated 30.06.2011 for a sum of Rs. 4.90 lakhs drawn at Capital Local Area Bank, Branch Mehatpur and assured that the cheque will be honoured on presentation, however, when the cheque was presented, the cheque was returned by the bank with the remarks “funds insufficient”, as per the memo dated 01.07.2011. Thereafter, the applicant issued a statutory notice to the respondent. However, even after receipt of the said notice, the respondent failed to clear the outstanding amount and did not pay the amount equal to the dishonoured cheque. Thus, the complaint was filed by the applicant against the respondent.

3. During the course of trial, a notice of accusation under Section 138 of the Act was served upon the respondent. After appearance of the respondent, the trial formally started and the

applicant himself appeared as CW1 and number of documents were exhibited. Even, in his statement under Section 313 Cr.P.C., the respondent had denied the allegations and stated that the cheque did not bear his signatures nor he had borrowed any amount from the applicant. However, he did not lead any defence evidence.

4. In the present case, finally the case was taken up by the trial Court and trial Court acquitted the respondent by making the following observations:-

“14. The perusal of cross-examination of complainant provides that he has not only failed to tell the amount which was allegedly borrowed by the accused but he has also not provided any date on which the alleged amount was borrowed. There is also no details of alleged principal amount and interest accrued upon it. In the opinion of court, the statement of account of accused, which was lying with complainant was the best evidence to prove the allegations of complaint. Rather, this court is bound to draw adverse inference against complainant to the extent that his contentions are not correct. As the complainant has not brought on record the statement of account, therefore, this court is not able to adjudicate whether any amount was borrowed by the accused or not. Even otherwise, complainant, in his cross-examination has stated that he cannot tell the amount, which was borrowed by the accused from him.

15. In view of version of complainant, given in cross-examination and mentioned in preceding para of this judgment, this court is of the opinion that complainant

has failed to prove on record execution of cheque by accused for a sum of

Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

16. Keeping in view the aforesaid law laid down by Hon'ble Supreme Court and facts and circumstances of present case, discussed in preceding paras of this Judgment, this court is of the opinion that accused has successfully displaced the presumption under Section 139 of Negotiable Instrument Act from evidence of complainant, himself. Hence, the said presumption has ceased to operate. Therefore, this Court has no other option except to hold that complainant has failed to prove on record that accused issued disputed cheque in discharge of legal liability and it is possible that complainant has misused the disputed cheque. Accordingly, both these points are decided against complainant and in favour of accused".

5. I have heard learned counsel for the parties and perused the record.

6. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of **Bhaskar Rao and**

others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288) as follows:-

“14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed in **Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974.**

The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach

made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

7. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3)**

RCR (Criminal) 62: 1996 CrilJ 2867, this Court observed as under:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question is the negative the order of acquittal is not to be disturbed."

8. From a perusal of the allegations levelled by the applicant, it is apparent that the applicant had clearly stated that he was running a business of commission agent and the respondent was customer of the applicant. When the accounts were settled, an amount of Rs. 4.90 lakhs including the interest was outstanding against the respondent and in discharge of his legal liability, the respondent had issued the cheque in question. However, the applicant could not lead evidence in this regard. Not only that, he failed to disclose the date of lending the amount to the respondent and could not tell the Court as to how such a huge amount was borrowed by the respondent from him. Even, the applicant had failed to discharge the initial burden in the present case and consequently, the question of reverting of presumption by the respondent did not arise at all. Even, I have carefully perused the findings recorded by the trial Court and find no grounds to interfere with the same.

9. Consequently, the present application for special leave to appeal is meritless and is liable to be declined.

10. Dismissed.

11. Pending application(s), if any, also stand disposed off accordingly.

15.05.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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