2025:PHHC:075398

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM A-1815-MA of 2014
Date of Decision: 27.05.2025

Ashok Saini ...Applicant

Versus

Brijesh Kumar ... Respondent

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

Present : Mr. Devender Arya, Advocate, for the applicant.

Mr. J.P. Sharma, Advocate, 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 14.10.2014 passed by the Judicial Magistrate 1st Class, Mohindergarh, 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 the present complaint against the respondent/accused by alleging that the respondent in discharge of his legal liability had issued cheque bearing No. 563118-000022000

dated 27.09.2009 from his Account No. 07422151003120 for a sum of Rs. 4 lakhs in favour of the applicant and had assured that on presentation, the cheque would be encashed. However, vide memo dated 01.10.2009, the cheque was received back dishonoured with the remarks “funds insufficient”. The applicant/complainant got a legal notice dated 03.10.2009 issued through registered post, which was replied by the respondent on 14.10.2009. It was further alleged in the complaint that despite receiving the statutory notice, the respondent failed to make the payment within a period of 15 days and the complaint was presented before the trial Court.

3. After examining the applicant as CW1, the trial Court found a *prima facie* case was made out against the respondent and he was summoned to face trial under Section 138 of the Act. After his appearance, the notice of accusation under Section 138 of the Act was served upon the respondent, to which, he pleaded not guilty and claimed trial. During the course of trial, the applicant stepped into the witness box as CW1 and tendered his sworn affidavit Ex.CW1/A. Sanjay Clerk OBC Bank was examined as CW2 and Kuldeep Yadav as CW3. Thereafter, the evidence was closed.

4. The respondent was confronted by the evidence led by the prosecution and his statement under Section 313 Cr.P.C. was recorded, vide which, he denied the existence of legally enforceable liability/debts qua the instant complaint and pleaded that he had been

framed by the applicant. He also chose to appear as a defence witness and the evidence was closed. After the trial, the respondent was ordered to be acquitted by the trial Court.

5. While assailing the findings recorded by the trial Court, the learned counsel for the applicant has vehemently argued that the respondent had taken a sum of Rs. 4 lakhs from the applicant and the cheque was issued by him in discharge of his legal liability. It was assured that on presentation, the cheque would be honoured and the applicant was entitled to the benefit of statutory presumption in his favour under Section 139 of the Act. He further contends that despite availability of sufficient evidence on file as well as statutory presumption in his favour, the respondent was wrongly acquitted by drawing wrong inferences from the evidence of the applicant himself. He further contends that even, the respondent had failed to lead any evidence to rebut the presumption and the respondent is liable to be convicted.

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

7. 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."*

8. 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."*

9. In the present case, the applicant had himself appeared as a witness in support of the averments made in the complaint. However, while appearing as CW1, he admitted that he was earning

Rs. 2/2.50 lakhs per year and had extended loan of Rs. 4 lakhs to the respondent and to discharge his legal liability, on account of borrowed amount of Rs. 4 lakhs, the cheque in question Ex.C1 was given to the applicant. However, the applicant/complainant failed to bring on record any writing or pro-note, which could support his averments. In fact, he admitted that no pro-note or writing was effected, when such a hefty loan was extended by him to the respondent. It is an admitted fact that the applicant and respondent had no close relationship and did not belong to same caste, community, locality or village. Rather they belonged to different places and had no relationship at all. Thus, it is unbelievable that such a huge amount was granted as loan by the applicant to the respondent without executing any simultaneous documentary evidence. Further, as per the admitted stand of the complainant, he was earning a sum of Rs. 2/2.50 lakhs per year and he had kept this amount at home and even failed to disclose as to how he came in possession of such an amount. Even, he had not withdrawn any amount from the bank also. Thus, this Court agrees with the findings recorded by the trial Court that there is no evidence to show that the applicant had extended a loan of Rs. 4 lakhs to the respondent and the cheque was issued in discharge of any legal liability.

10. Even otherwise, I have scanned the findings recorded by the trial Court and do not find any material irregularity or illegality in

the impugned judgment. The trial Court had discussed the evidence in detail in the light of the settled canons of law and the findings are legally sustainable.

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

12. Dismissed.

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

27.05.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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