



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

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**CRM-A-1382-MA-2014
Date of Decision: 16.05.2025**

NITIN AGNIHOTRI

.....APPELLANT

Versus

MANISH NIJHAWAN

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anand Chhiber, Sr. Advocate with
Ms. Komal Sharma and Mr. Utkarsh, Advocates
for the appellant.

Mr. Lovish Rattan, Advocate for
Mr. Surinder Sharma, Advocate for the respondent.

SANDEEP MOUDGIL, J (ORAL)

1. The present appeal has been preferred by the appellant under Section 378(4) Cr.P.C, against the impugned judgment dated 04.08.2014 passed by the Judicial Magistrate Ist Class, Panchkula, whereby 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 the present petition unfolds as follows:-

The appellant/complainant has filed the present complaint under Section 138 of the Negotiable Instruments Act, read with Section 420 of the Indian Penal Code, against the accused on the allegations that the accused is

well known to the complainant and, being in financial need, requested a loan of ₹9,90,000 in October 2012. Considering their relationship, the complainant advanced the said amount as a loan to the accused in the first week of October 2012, for six months. Upon repeated requests and demands made by the appellant/complainant for repayment, the accused, in discharge of his liability, issued a cheque bearing No. 000025 dated 01.05.2013, drawn on Kotak Mahindra Bank, Branch Office SCF 108, Phase 3, B2, Mohali, for ₹9,90,000/. However, when the complainant presented the cheque for encashment on 20.05.2013, it was dishonoured with a return memo dated 21.05.2013 from HDFC Bank Limited, having the remark "INSUFFICIENT FUNDS." Thereafter, the complainant served a legal notice to the accused through registered AD, dated 25.05.2013 under Section 138 of the Negotiable Instruments Act read with Section 420 IPC. Despite receiving a legal notice dated 25.05.2013, the accused failed to make the payment within the stipulated period 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 failed to appreciate the fact that at the evidence stage, the accused-respondent Manish Nijhawan in his statement dated 29.01.2014 stated that he intends to make the payment of cheque amount in question to the appellant/complainant and wants to compromise the matter.

5. It is further argued that the Trial Court erred in concluding that there was no substantive evidence to conclusively establish the guilt of the accused. In fact, the appellant/complainant had complied with all the necessary requirements for filing a complaint under Section 138 of the Negotiable Instruments Act. He further contends that it is an admitted fact that the respondent-accused was duly served with the legal notice under Section 138 of the Act, but he did not send any reply to the said notice, which clearly shows that the accused-respondent admits the liability of the cheque amount. Furthermore, the respondent-accused made a statement before the trial Court that he is ready and willing to make the payment of cheque amount to the complainant/appellant.

6. It has been further contended that the trial Court acquitted the accused/respondent solely because the appellant/complainant did not take any counter-security and failed to show the loan amount in his income tax returns. However, the transaction record (Ex. C6) clearly shows a cash withdrawal of ₹9,90,000/- by the appellant on 03.10.2012 to be paid to the accused-respondent. Moreover, the trial Court also failed to apply its judicious mind to the fact that the Negotiable Instruments Act does not mandate the disclosure of such amounts in income tax returns.

7. On the other hand, learned counsel for the respondent contends that the judgment passed by the Trial Court is correct and justified, as neither the complainant/appellant advanced an alleged friendly loan by way of cheque nor there is any supporting documentary proof showing the giving of such advance to the accused-respondent. He further asserts that the complainant/appellant did not show the amount of Rs.9,90,000/- which was advanced to the respondent-accused in his income tax returns. He submits that the accused-respondent took loan amount from one Gulshan Arora, who in lieu of that loan amount got number of signed blank cheques from him, one of those blank cheques was misused by the complainant for filing the present complaint, in support thereof, the respondent-accused had relied upon Ex. D-1 i.e. complaint forwarded to Senior Superintendent of Police, SAS Nagar, Mohali on 15.05.2013, much before the filing of the present complaint.

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

9. From the perusal of the judgment passed by the trial court, it is evident that during cross-examination, the complainant/appellant admits that the cheque was blank when it was issued and he himself filled it. He again deposed that the body of the cheque was filled in the presence of the accused-respondent. Although, the complainant-appellant claimed that the accused-respondent was present at the time of filing the cheque but to substantiate this claim, there is no supporting evidence. The impugned judgment also shows that the complainant failed to provide any evidence of a cordial relationship with the accused, which could justify the advancement of a substantial amount of ₹9,90,000/- to the accused-respondent. It is also an admitted fact that the

appellant/complainant did not disclose such a large amount in his income tax return.

10. 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.

11. 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.

12. On perusal of the judgment passed by the trial Court dated 04.08.2014, 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 are not proved beyond a 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.

13. Accordingly, the leave to appeal stands declined.

14. Ordered accordingly.

16.05.2025

Poonam Negi

(Sandeep Moudgil)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No