

(2013) 08 P&H CK 0720

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM-A-738-MA of 2012

S.K. Goyal

APPELLANT

Vs

M/s. Chittar Mal Mool
Chand and AnotherRESPONDENT

Date of Decision: Aug. 14, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 378(4)
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: Sabina, J**Bench:** Single Bench**Advocate:** S.K. Jain, for the Appellant; Parminder Singh, for the Respondent**Final Decision:** Dismissed

Judgement

Sabina, J.

Respondents had faced trial in a complaint filed by the applicant u/s 138 of the Negotiable Instruments Act, 1881 (in short "Act"). Trial Court vide judgment dated 01.06.2012 ordered the acquittal of the respondents. Hence, the present application u/s 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to file appeal by the complainant. I have heard learned counsel for the parties and have gone through the record available on file carefully.

2. Applicant had filed complaint u/s 138 of the Act against the respondents with regard to dishonour of cheque dated 19.09.2006 in the sum of Rs. 55,000/- issued by the respondents in his favour. When the cheque was presented for encashment, it was dishonoured with the remarks "Exceeds Arrangement".

3. The Trial Court while acquitting the respondents and exonerating them qua notice of accusation served on them u/s 138 of the Act has held as under:-

Otherwise also, the case of the complainant is that the accused had purchased various goods from him vide Bill No. 2857 dated 23.08.2006 for Rs. 8475/- i.e. Ex. C16, Bill No. 2860 dated 23.08.2006 for Rs. 1570/- Ex. C12, Bill No. 3020 dated 01.09.2006 for Rs. 20,134/- Ex. C13, Bill No. 3021 dated 02.09.2006 for Rs. 12,003/- Ex. C15, and in discharge of the same, the accused had issued cheque Ex. C1 dated 19.09.2006 amounting to Rs. 55,000/- No doubt, CW 3 Bhisham Gupta has placed on record the carbon copies of the aforesaid bill as Ex. C12 to Ex. C16, however, other than, the fact that CW 3 Bhisham Gupta had no personal knowledge about the transactions taken place vide the aforesaid bills, it is also pertinent to mention here that the Bills Ex. C12 to Ex. C16 are not free from doubts. The original carbon copies of Bill No. 2857 Ex. C16, Bill No. 2860 Ex. C12 and Bill No. 3021 Ex. C14 bear over-writings with pen. Further more, the Bill No. 6956 amounting to Rs. 12003/- is issued on 24.02.2007 i.e. After five months from the date on which the cheque Ex. C1 was drawn i.e. 19.02.2006. It is quite surprising that even before the purchase of alleged goods by the accused vide Bill No. 6956 dated 24.02.2007, he had issued the cheque Ex. C1 for the payment of the same. It is beyond the intelligence of any prudent man that even before a liability had arisen, a person would issue a cheque to discharge the same. In this regard, it is pertinent to mention that CW 3 Bhisham Gupta, in his cross-examination, has admitted that the contents on the body of the cheque were filled up by him in his own hand and this fact raises presumption that blank signed cheque of the accused has been misused by the complainant and this also raise serious doubts about the entire claim of the complainant.

4. The reasons given by the trial court, while acquitting the respondents are sound reasons. Learned counsel for the applicant has failed to point out any misreading of evidence on record by the trial Court which would warrant interference by this Court.

5. Their Lordships of the Supreme Court in [Allarakha K. Mansuri Vs. State of Gujarat](#) , held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

6. A Division Bench of this Court in [State of Punjab Vs. Hansa Singh](#) while dealing with an appeal against acquittal, has opined as under:

We are of the opinion that the matter would have to be examined in the light of the observations of the Hon"ble Supreme Court in [Ashok Kumar Vs. State of Rajasthan](#) , which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a misreading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

7. To the same effect is the ratio of the judgments of the Supreme Court in [State of Goa Vs. Sanjay Thakran and Another](#) , and in [Chandrappa and Others Vs. State of Karnataka](#) ,

8. Similarly, in [Mrinal Das and Others Vs. The State of Tripura](#), Supreme Court Cases 479, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed

Hence, no ground is made out to grant leave to file an appeal. Accordingly, this application is dismissed.