

Suraj Bhan Vs Pardeep Kumar

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 1, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 378(4)
Negotiable Instruments Act, 1881 (NI) â€” Section 138

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: Ashok Kumar Khunger, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Paramjit Singh Patwalia, J.

The instant application has been filed u/s 378(4) Cr.P.C. for grant of leave to appeal against the impugned

judgment dated 22.01.2014 passed by learned Judicial Magistrate 1st Class, Bathinda whereby complaint filed by applicant u/s 138 of the

Negotiable Instruments Act has been dismissed and respondent has been acquitted of the notice of accusation issued against him.

2. Brief facts of the case are that a complaint was filed by the applicant-complainant u/s 138 of the Negotiable Instruments Act, 1881 alleging that

in discharge of his legal liability, accused-respondent issued cheque No. 013576 dated 05.02.2010 for a sum of Rs. 1,60,000/- and another

cheque No. 013575 dated 05.02.2010 for a sum of Rs. 1,54,123/- in favour of complainant out of his account No. MCC 113117260277

maintained by the accused with the drawee bank and assured the complainant that the above said cheques will be honoured on presentation for

their encashment. On presentation of cheques, the bank of complainant further sent the same for clearance to the banker of accused, but it was

dishonoured with remarks ""Exceed Arrangements"". Upon receipt of cheque with memo through his banker, complainant served a registered legal

notice dated 29.03.2011 through registered post upon the accused calling upon him to make the payment within 15 days, which was never

received back. As such, there is presumption under law that the same has been delivered to the accused. But despite that the accused failed to

make the payment of amount of the above said dishonoured cheques to the complainant within the period of 15 days and even thereafter till filing

of the complaint. Thereafter, the complainant filed the complaint before the trial Court. On the basis of preliminary evidence, notice of accusation

for commission of an offence punishable u/s 138 of the Negotiable Instruments Act, 1881 was served upon the accused-respondent to which he

pleaded not guilty and claimed trial.

3. The complainant, in order to prove his case, examined himself as CW1. Thereafter, statement of the accused-respondent u/s 313 Cr.P.C. was

recorded wherein he pleaded complete innocence and false implication.

4. The trial Court, after appreciating the evidence, acquitted the respondent of the notice of accusation issued against him vide judgment dated

22.01.2014. Hence, this application for grant of leave to appeal.

5. I have heard learned counsel for the applicant and gone through the impugned judgment.

6. The trial Court, after appreciating the evidence on record, observed as under:-

14. First of all, both the cheques are of dated of 5.2.2010. However, the complaint was filed on the basis of transaction on 02.07.2010. The

complainant in his cross-examination also admitted that he received notice from the accused which was placed on record Ex. DA. The notice

issued by the accused on 8.6.2010 before the alleged transaction dated 2.7.2010 and in that notice, it is clearly mentioned Para 3 that accused

handed over blank cheques without filling the dates and number of cheques were also mentioned in that notice and the present complaint was also

on the basis of two of the cheques mentioned in that notice. Thereafter, reply of that notice given by the complainant through counsel on 8.9.2010

after three months and before filing the present complaint. As per the account statement produced on record by the complainant himself, the

outstanding balance from 1.4.2009 to 31.3.2010 was Rs. 48,498/- which was outstanding towards the complainant party. As such on 5.2.2010

no amount was outstanding against the accused, thereafter, the transaction shown in the complaint was mentioned in another account statement

dated 2.7.2010, but before this transaction, the accused issued notice for returning the blank cheques to the accused. No other evidence produced

on record by the complainant to prove that accused filled the dates 5.2.2010 on the cheques on 7.2.2010 and he failed to examine any of his

employee who allegedly visited the accused party to claim the amount and got the dates mentioned in the cheques.

15. From the entire evidence, it is proved that on 5.2.2010 nothing was due against accused rather the amount was outstanding against the

complainant party and from the whole evidence, it is clear that at the time of issuance of cheque, nothing was due against accused. From the both

cheques, it is clear that dates were mentioned later on with different ink and different writing. No liability was there upon the accused on 2.7.2010

as alleged by the complainant. It is well established that complainant party filled the cheque later on which were given to the complainant by the

accused. As the complainant himself failed to prove that the cheques were issued after transaction and also failed to prove the liability towards the

accused on 5.2.2010. However, the accused filed a complaint on 2.7.2010 on the basis of transaction on 2.7.2010. Hence, no criminal offence is

made out against the accused u/s 138 Negotiable Instruments Act. The complaint of the complainant has no merits and the same is hereby

dismissed. Accused is acquitted and directed to furnish personal bail bonds in the sum of Rs. 10,000/- with one surety in the like amount within

the meaning of 437-A with an undertaking to appear before the appellate court in the event of filing of an appeal. File be consigned to record-

room after completing it in all respects.

7. 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. This view has been reiterated in State of Goa Vs. Sanjay Thakran and Another, and

Chandrappa and Others Vs. State of Karnataka,

8. 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.

9. In Mrinal Das and Others Vs. The State of Tripura, decided on September 5, 2011, the Hon"ble Supreme Court, after looking into many

earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

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.

10. Similarly, in the case of State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, the Hon"ble Supreme Court has observed as under:-

7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the

judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction

keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of

innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such

presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a

normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within

its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

11. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:-

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance

of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except

that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused

has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds

well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while

exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where

interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

12. Learned counsel for the applicant has failed to show any error of law or on facts on the basis of which interference can be made by this Court

in the judgment under challenge.

13. There is also a delay of 96 days in filing the appeal. No plausible ground has been mentioned in the application for condoning the delay.

14. As such, application for leave to appeal is dismissed on merit as well on account of delay.

15. However, the applicant will be at liberty to approach the Civil Court to pursue his remedy.