

**In the High Court of Punjab and Haryana at Chandigarh**

CRM-A No.940-MA of 2013  
Date of decision:29.11.2013

Parveen Kumar

..... Applicant

Versus

Gopal Das

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE SABINA**

Present: Mr.Ravindra Jain, Advocate,  
for the applicant.

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**SABINA, J.**

Respondent had faced trial in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (the Act for short). Trial Court vide judgment dated 6.9.2013 ordered the acquittal of respondent of the charge framed against him. Hence, the application under Section 378 (4) of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) has been filed by the State with a prayer for grant of leave to file an appeal against the judgment dated 6.9.2013.

I have heard learned counsel for the applicant and have gone through the record available on the file carefully.

Applicant had filed a complaint under Section 138 of the Act against the respondent qua dishonour of two cheques dated 11.12.2009 and 25.12.2009 in the sum of ₹ 20,000/- each. The trial Court, while ordering acquittal of the respondent, has held that the cheques in question had been issued to the son of the complainant

by way of security, which had been misused by him (son of the complainant) and the complaint in question had been got filed through the complainant. DW-1 had deposed that respondent was working under the son of the complainant. In these circumstances, the reasons given by the trial Court, while ordering the acquittal of the respondent, are sound reasons.

Learned counsel for the applicant has failed to point out any mis-reading of evidence on record by the trial Court which would warrant interference by this Court.

Their lordships of the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, 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 v. State of Rajasthan*, 1991(1) SCC 166, 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 mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC**

**755 and in Chandrappa v. State of Karnataka, (2007) 4 SCC 415.**

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) 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.

**(SABINA)  
JUDGE**

**November 29, 2013**  
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