



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**ACQA No. 83 of 2016**

Chhedi Lal Shahjit S/o Shri S.R. Shahjit Aged About 50 Years R/o House No. 1017, Kripal Nagar, Kohka, Bhilai, Near Sevendays School, Tahsil And District Durg, Chhattisgarh. Complainant. **... Appellant**

versus

1 - Rajesh Gupta S/o R.L. Gupta Aged About 46 Years R/o Sundar Nagar, Tata Line, Kohka, Bhilai, Tahsil And District Durg, Chhattisgarh. (Accused)

2 - State Of Chhattisgarh Through District Magistrate Durg, Chhattisgarh.,

... Respondents

For Appellant	: Shri A.D.Kuldeep, Advocate.
For Respondent 1	: Shri Pushpendra Kumar Patel, Advocate.
For Respondent 2/State	: Shri Atanu Ghosh, Deputy Government Advocate.

(HON'BLE SHRI JUSTICE RADHAKISHAN AGRAWAL)**Judgment on Board****27/03/2026**

1. This Acquittal Appeal filed by the appellant / complainant under Section 378 of the Cr.P.C. arises out of the judgment dated 01.02.2016 passed by the Additional Sessions Judge, Durg in Criminal Appeal No. 137/2015, whereby the learned trial trial Court acquitted the respondent No.1 herein of the charge under Section 138 of the Negotiable Instruments Act, 1881 (for short, the NI Act).
2. Brief facts as projected by the appellant/complainant are that the complainant had provided to respondent No.1, a sum of Rs.20,000/-, Rs.15,000/- and Rs.15,000/- respectively as loan and as against the said amounts, the respondent No.1 also given three cheques of the



same amount to the complainant on 06.11.2011, 21.11.2011 and 02.12.2011 respectively. The complainant submitted those cheques in the State Bank of India, Sector-1, Bhilai on 24.02.2012, but the same were dishonoured as informed by the Bank on 27.02.2012 whereupon the complainant issued a legal notice to the respondent No.1 on 03.03.2012, despite that, the respondent No.1 did not repay the same. Thereafter, the complainant is constrained to file a complaint under Section 138 of the NI Act before the J.M.F.C. Durg.

3. Learned J.M.F.C., after appreciating the evidence on record, vide its judgment 28.09.2015 passed by the Judicial Magistrate First Class, Durg in Complaint Case No. 345/12, held respondent No.1 guilty under Section 138 of the NI Act and accordingly he was convicted and sentenced to RI for 6 months with compensation amount of Rs.55,000/- and in default thereof, to further undergo SI for one month. Against the said judgment, both the complainant and respondent No.1 preferred separate appeals before the Additional Sessions Judge, Durg, and the appellate Court vide its judgment dated 01.02.2016, allowed the appeal of respondent No.1 while acquitting him of the charge whereas dismissed the appeal of the complainant. Hence, this appeal by the complainant.
4. Learned counsel for the appellant submits that the trial Court was justified in convicting the respondent No.1 under Section 138 of the NI Act whereas the finding of acquittal recorded by the appellate Court is perverse and contrary to law. He further submits that despite there being sufficient evidence and material on record pointing out the offence towards respondent No.1, the learned appellate Court has committed an error in acquitting the respondent No.1. Thus, the



impugned judgment of acquittal suffers from perversity and illegality, therefore, the same is liable to be set aside.

5. On the other hand, learned counsel for the respondent No.1 submit that the appellate Court, after properly appreciating the evidence on record, has rightly acquitted the respondent/accused of the said charges by reversing the finding of J.M.F.C. convicting the respondent No.1. He further submits that in the facts and circumstances of the case, the finding of acquittal recorded by the appellate Court is based on evidence and material available on record, which is neither perverse nor contrary to law.
6. Learned counsel for respondent No.2/State supports the submissions made by the learned counsel for the appellant/complainant.
7. I have heard learned counsel for the parties and perused the record with utmost circumspection.
8. The Supreme Court in the matter of *Jafarudheen and others vs. State of Kerala* reported in (2022) 8 SCC 440 has considered the scope of interference in Appeal against acquittal in judgment at para 25, which reads as under:-

25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be terms as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”



9. The Hon'ble Apex Court in its judgment dated 12.02.2024 (Criminal Appeal No 1162 of 2011) passed in *Mallappa and Ors. Versus State of Karnataka*, has held in para 36 as under:-

“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

‘(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive--inclusive of all evidence, oral and documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

10. In the present case, the question that arises for consideration is whether the appellate Court was justified in acquitting the respondent No.1 of the charge under Section 138 of NI Act?
11. The complainant (C.W.1) Chhedilal Shahjit in his examination-in-chief has stated that he provided a sum of Rs.20,000/-, Rs.15,000/- & Rs.15,000/- to the accused/respondent in three installments for domestic purpose and in lieu of it, the respondent No.1 has also given



three cheques. However, in cross-examination, he admitted that firstly he advanced to the accused Rajesh Gupta, a sum of Rs.15,000/-, secondly he gave a sum of Rs.20,000/- and then Rs.15,000/-, but he did not remember on which dates, he gave the said amounts to the accused/respondent No.1. He further admitted that he has stated before the competent court that, apart from payment of Rs.10,000/- on 06.06.2008, no other amount had been paid to Rajesh Gupta, respondent No.1 herein, and he had also made the same statement during his cross-examination. He further admitted that the aforesaid three cheques had been filled by himself.

12. Thus, from perusal of the above, it appears that the complainant's version is doubtful, as although he specifically remembered advancing Rs.10,000/- on 06.06.2008, but he failed to recall the dates on which the subsequent alleged loans of Rs.20,000/-, Rs.15,000/- and Rs.15,000/- were advanced, and his admissions further created doubt that, apart from Rs.10,000/-, no other amount had been paid to the accused and that other blank cheques had also been obtained from him and no explanation was offered as to why the complainant himself filled in the cheque amount, his name and other particulars. The visible difference in ink between the accused's signatures and the remaining writings on Exhibits P-1, P-2 and P-3 further rendered the case suspicious. Though the accused admitted his signatures, thereby attracting the presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881, but he successfully rebutted the same by raising a probable defence through cross-examination on the standard of preponderance of probabilities, creating doubt regarding the existence of a legally enforceable debt of Rs.50,000/-. In such



circumstances, the complainant was required to adduce cogent evidence proving the dates and circumstances of the alleged three installments, but failed to do so.

13. The learned appellate Court has elaborately discussed the evidence led by the complainant and after analyzing the entire evidence, has come to the conclusion that the complainant's version, regarding the alleged advancement of amounts in three installments to the accused/respondent No. 1, is doubtful and lacks credibility, and as such, acquitted the accused/respondent No.1 of the said charge levelled against him.
14. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in Jafaruddeen & Mallappa (supra) and the view which has been taken by the learned trial Court appears to be plausible and possible view and in the absence of any patent illegality or perversity this Court is not inclined to interfere with the impugned judgment.
15. For the foregoing discussion, the impugned judgment dated 01.02.2016 acquitting the respondent No.1/accused person is affirmed and the appeal filed by the appellant/complainant is liable to be and is hereby dismissed.

Sd/-

(Radhakishan Agrawal)

JUDGE