

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeal No. 253 of 2014

Reserved on: 13.11.2025

Decided on: 28.11.2025

M/s Himachal Pradesh Horticulture Produce
Marketing and processing Corporation

...Appellant

Versus

Rakesh Awasthi

...Respondent

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?*

For the appellant: Mr. Rahul Ghatania, Advocate.

For the respondent: Mr. Adarsh K. Vashista, Advocate.

Sushil Kukreja, Judge

The instant appeal has been preferred by the appellant-complainant (hereinafter referred to as the complainant) under Section 378 of Criminal Procedure Code (for short "Cr.P.C.") against judgment dated 17.07.2013, passed by learned Judicial Magistrate 1st Class, Court No.3, Shimla, District Shimla, H.P., in Criminal Complaint No.1941-3 of 2010/09, whereby the accused (respondent herein) was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "the NI Act").

2. Briefly stated the facts of the case, as emerge from the record, are that the accused was posted as Junior Accountant in the

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

branch office of the complainant-Corporation at Baij Nath and as per audit para, a sum of Rs.36,91,926/-, including inventory of wine of Rs.1,04,625/- was held recoverable from the accused, therefore, a criminal case was registered against him. On 23.12.2008, the accused executed an affidavit admitting his liability to make the payment of Rs.35,87,301/- to the complainant and in order to discharge his part liability, he issued a cheque bearing No.695049, dated 31.03.2009, amounting to Rs.13,50,000/- in favour of the complainant-Corporation. However, on presentation, the said cheque was dishonoured with the remarks 'funds insufficient' in the bank account of the accused. Thereafter, a legal notice was issued to him on 19.04.2009, for arranging the cheque amount, but he did not make the payment. Subsequently, the complainant filed a complaint under Section 138 of NI Act against the accused before the learned Trial Court.

3. The learned Trial Court, after having found sufficient material against the accused, had put notice of accusation to him, vide order dated 25.05.2009 and on conclusion of trial, the learned Trial Court acquitted the accused for commission of the offence under Section 138 of NI Act, hence, the present appeal by the complainant.

4. Learned counsel for the appellant/complainant contended that the learned Trial Court has failed to appreciate the fact that the complaint was filed by the General Power of Attorney on behalf of the principal. He further contended that the learned Trial Court has wrongly held that the notice sent to the accused for arranging the cheque

amount was not proved on record and it has gone in much technicalities. It is submitted that the impugned judgment is based on hypothesis and imaginary grounds, hence, prayer for setting-aside of the same and acceptance of the instant appeal has been made.

5. Per contra, learned counsel for the respondent-accused while supporting the judgment of the Trial Court, contended that there was no infirmity in the findings returned by the learned trial Court as the same were borne out from the record of the case, therefore, the present appeal deserves to be dismissed.

6. I have heard learned counsel for the appellant/ complainant as well as learned counsel for the respondent/ accused and also gone through the record carefully.

7. It is well settled by the Hon'ble Apex Court in a catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. Further, if two reasonable views are possible on the basis of the evidence on record, the Appellate Court should not disturb the

finding of acquittal recorded by the trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

8. The scope of power of Appellate Court in case of appeal against acquittal has been dealt with by the Hon'ble Apex Court in ***Muralidhar alias Gidda & another Vs. State of Karnatka reported in (2014) 5 SCC 730***, which reads as under :-

"10. Lord Russell in Sheo Swarup [1], highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said,

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh[2] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed:

"7.....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [3], Madan Mohan Singh [4], Atley [5] , Aher Raja Khima [6], Balbir Singh [7], M.G. Agarwal [8], Noor Khan [9], Khedu Mohton [10], Shivaji Sahabrao Bobade [11], Lekha Yadav [12], Khem Karan [13], Bishan Singh [14], Umedbhai Jadavbhai [15], K. Gopal Reddy [16], Tota Singh [17], Ram Kumar [18], Madan Lal [19], Sambasivan [20], Bhagwan Singh [21], Harijana Thirupala [22], C. Antony [23], K. Gopalakrishna [24], Sanjay Thakran [25] and Chandrappa [26]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court

must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

9. The Hon'ble Supreme Court in ***Rajesh Prasad vs. State of Bihar & another, (2022) 3 SCC 471***, observed as under:-

"31.The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunchalam v. P.S.R. Sadhanantham (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording

valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana vs. Lakhbir]

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarized as follows:

31.2.1. Where the approach or reasoning of the High Court is perverse;

(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. vs. Shanker 1980 Supp SCC 489]

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. [State of U.P. v. Hakim Singh (1980)]

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam vs. P.S.R. Sadhanantham (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of "implicit proof" rather than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it necessary on the part of the prosecution to establish "motive". [State of A.P. v. Bogam Chandraiah (1990) 1 SCC 445]

31.2.2. Where acquittal would result in gross miscarriage of justice;

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh 1989 Supp (1) SCC] or based on extenuating

circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu (1983) 3 SCC 502]

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610].”

10. In ***H.D. Sundara & others vs. State of Karnataka, (2023)***

9 SCC 581, the Hon’ble Supreme Court has observed that the Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. The relevant portion of the above judgment is as under:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarized as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

9. Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine

the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. The appellate court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken."

11. It is also a settled legal position that in acquittal appeal, the Appellate Court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of ***State of Karnataka vs. Hemareddy***, reported in ***AIR 1981 SC 1417***, wherein it is held as under:-

"...This Court has observed in Girija Nandini Devi vs. Bigendra Nandini Chaudhary (1967) SCR 93; (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with a view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

12. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the order of acquittal. Further, if two views were possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court and in case the appellate court

agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary.

13. Adverting to the facts of the case on hand. In the case on hand, the complainant examined as many as three witnesses. CW-1 Prem Nath was examined to prove on record postal receipt Ext. CW1/A, UPC receipt Ext. CW1/B and acknowledgment card Ext. CW1/C. This witness deposed that he had not brought the record because the same was destroyed, which was being kept for one year only. CW-2 S.K. Sood, Manager, SBI Palampur, deposed that cheque Ext. CW2/A was received for collection in the bank, which was dishonoured, vide memo Ext. CW2/B for the reason 'insufficient funds' and the copy of statement of account of the accused was Ext. CW2/C. CW-3 Anil Sharma deposed that he was authorized to file and pursue the complaint, vide General Power of Attorney Ext. CW3/A. He further deposed that the complainant-Corporation deals in the processing of horticultural products throughout India. The accused was working as Junior Accountant/Branch Incharge of the Corporation branch Baij Nath in the year 2001 and there was an audit in the Baij Nath Branch of the Corporation in the year 2004-05 and irregularity was found. As per the record, there was irregularity of Rs.36,91,926/- out of which, inventory was of Rs.1,04,625/-, in this regard, an FIR was registered against the accused, who approached the complainant-Corporation on 09.12.2008 for settlement, vide letter Ext. CW3/B. Thereafter, affidavit Ext. CW3/C was given by the accused regarding his liability on 23.12.2008 and alongwith the said affidavit, he

issued a cheque (Ext.CW2/A). On presentation, the said cheque was dishonoured, vide memo Ext. CW2/B, on account of "Insufficient Funds" in the bank account of accused. Thereafter, a demand notice was sent to him on his correct address and registered letter of the notice Ext.CW1/C was returned back as unclaimed. In his cross-examination, this witness admitted that the present dispute was related to Baij Nath Branch of the complainant-Corporation.

14. From the perusal of the evidence of the complainant, it has become clear that the cheque Ext. CW2/A was dishonoured on account of "funds insufficient" in the bank account of the accused, vide memo Ext.CW2/B. The complainant-Corporation presented the said cheque for encashment, which was returned unpaid, vide memo dated 06.04.2009 (Ext.CW2/B) with remarks "insufficient funds" in the account of accused. Perusal of postal receipt Ext. CW1/A and UPC receipt Ext.CW1/B reveal that a registered letter Ext.CW1/C was sent by the complainant to the accused, which was returned back to the complainant unclaimed. Thereafter, the complaint was filed by the complainant.

15. The main defence raised on behalf of the accused is that no valid authority has been given by the corporation to CW-3 to file and pursue the complaint against the accused. Learned counsel for the respondent/accused also submitted that with respect to the cheque in question, a suit for recovery of Rs.31,61,110/- was filed by the Corporation, which was decreed by a Coordinate Bench of this Court on 28.07.2017 in Civil Suit No.12 of 2021, titled Himachal Pradesh

Horticulture Produce Marketing and Processing Corporation Vs. Rakesh Awasthi and the plaintiff (complainant herein) was held entitled to recover a sum of Rs.31,01,110/- alongwith interest at the rate of 12% per annum from the date of filing of the suit till its realization from the defendant (accused herein).

16. I have gone through the impugned judgment passed by the learned Trial Court and also perused the oral as well as documentary evidence led before the Trial Court. The Trial Court while considering the oral as well as documentary evidence has clearly observed that the complainant has miserably failed to prove its case beyond reasonable doubt against the respondent. From the oral evidence of the complainant, it appears that the complainant has failed to show the valid authority to file a complaint against the present respondent -accused for the offence punishable under Section 138 of NI Act. No doubt, the complainant-Corporation has examined Shri Anil Sharma as CW-3, who was posted as Marketing Assistant of the complainant-Corporation, to prove its case who deposed that the Corporation had authorized him to make a statement by executing a General Power of Attorney in his favour, which is Ext. CW3/A. However, it is an admitted fact that the present dispute pertains to Baij Nath Branch of the complainant-Corporation whereas perusal of General Power of Attorney Ext. CW3/A reveals that CW-3 Anil Sharma, Marketing Assistant, HPMC, Head Office at Shimla, has been authorized to deal with the cases of the complainant-Corporation only

with respect to its Shimla Branch. Hence, the learned Trial Court had rightly observed that CW-3 Anil Sharma was not authorized to file and pursue the complaint with respect to the working of HPMC, Baij Nath Branch.

17. It was a duty of the complainant-Corporation to have issued a valid letter of authority to file and pursue the complaint against the respondent-accused. The complainant-Corporation could also have produced the valid authority letter before this court in order to rectify the irregularity/cure the defect by placing on record a valid authority letter. However, even in the present appeal, valid authority letter has not been produced to rebut the conclusion of the trial court. Thus, from the evidence itself, it is established that the complainant has not proved its case beyond reasonable doubt.

18. In view of what has been discussed hereinabove, no interference is called for in the impugned judgment of acquittal, dated 17.07.2013, passed by learned Judicial Magistrate 1st Class, Court No.3, Shimla, District Shimla, H.P. as the same is the result of proper appreciation of evidence and law. The appeal, which sans merits, deserves dismissal and is accordingly dismissed. Bail bonds are discharged.

(Sushil Kukreja)
Judge

November 28, 2025
(V.Himalvi)