

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 25th OF APRIL, 2024

CRIMINAL APPEAL No. 13704 of 2023

BETWEEN:-

**KRISHNAPAL S/O SAJJAN SINGH, AGED ABOUT 49
YEARS, OCCUPATION: BUSINESS NEAR TULJA VIHAR
GATE, A.B. ROAD DISTRICT DEWAS (MADHYA
PRADESH)**

.....APPELLANT

(SHRI GAURAV KUMAR VERMA - PETITIONER)

AND

**HARI SINGH S/O LALJIRAM, AGED ABOUT 60 YEARS,
OCCUPATION: AGRICULTURIST VILLAGE
DEHRIYAPETH, TEHSIL SONKATCH DISTRICT DEWAS
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SHAHID SHAIKH - ADVOCATE)

.....
*This appeal coming on for orders this day, the court passed the
following:*

ORDER

Heard on I.A.No.16521/2023, an application under Section 378(4) of Cr.P.C for grant of leave to appeal against the order of acquittal.

This appeal has been filed under Section 378 of the Code of Criminal Procedure, for seeking leave to appeal against the judgment of acquittal dated 26.09.2023 passed by the learned Judicial Magistrate First Class, Dewas District-Dewas in Criminal Complaint No.SCNIA/473/2017, whereby the accused has been acquitted from the offence under Sections 138 of N.I. Act, 1881.

2. Learned counsel for the applicant submitted that learned trial Court has passed the judgment of acquittal only on the fact that the the cheque return memo filed was without any bank seal and signature of the concerned authority and on that basis dismissed the complaint, whereas on that aspect learned High Court of Delhi has opined that if the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque return memo as invalid or illegal. The cheque return memo is not a document which is required to be covered under Section 4 of the Bankers Book (Evidence) Act, 1891. In this regard learned counsel for the applicant also relied upon judgment of the High Court of Delhi rendered in the case of *Guneet Basin vs. State of NCT of Delhi & Ors.* reported as 2022/DHC/005048 and on that basis submitted that only the basis of infirmity in cheque return memo the entire trial under Section 138 of N.I. Act cannot be vitiated. Hence the order of trial Court is against the law and looking to the perversity of the judgment leave be granted.

3. In reply, learned counsel for the respondent basing his arguments on judgment passed by High Court of M.P in the case of *Satyendra Tiwari vs. State of M.P.* reported as 2014(3) MPLJ 574 contended that co-ordinate Bench of M.P. High Court has already decided the point and stated that endorsement memo without signature and seal has no evidentiary value and it can be treated only a mere piece of paper. Hence prayed for rejection of this application.

4. In view of the rival submissions, I have gone through the judgment of *Guneet Bhasin (Supra)* certainly in this judgment Hon'ble High Court of Delhi has opined that if there is any infirmity in the cheque return memo, it does not render the trial under Section 138 of N.I. Act as nullity.

5. Having gone through the record it is found that the said document Ex-P/2 has no seal of the said bank and signature of the authority, therefore, it is in violation of guidelines issued by Reserve Bank Of India vide its letter No. **RBI/2011-12/121 DPSS.CO.CHD NO.120/03.06.01/2011-12 dated 25.07.2011.** The said guidelines is required to be and is hereby reproduced hereunder:-

"RBI/2011-12/121

DPSS.CO.CHD.No. 120 / 03.06.01 / 2011-12 July 25, 2011

The Chairman and Managing Director / Chief Executive Officer

All Scheduled Commercial Banks including RRBs

/Urban Co-operative Banks / State Co-operative Banks /

District Central Co-operative Banks

Madam / Dear Sir,

Dishonour / Return of Cheques - Need to Sign / Initial the Cheque Return
Memo

Please refer to our circular DPSS. CO. CHD. No. 485 / 03.06.01 / 2010-11 dated September 1, 2010 on Dishonour / Return of Cheques - Need to Mention the 'Date of Return' in the Cheque Return Memo, wherein citing the criticality of the document in case of recourse to legal action, it has been indicated that instruments returned unpaid should have a signed / initialed objection slip on which a definite and valid reason for refusing payment must be stated, as prescribed in Rule 6 of the Uniform Regulations and Rules for Bankers' Clearing Houses (URRBCH).

Certain instances of banks not signing the Cheque Return Memos stating that the Memos are computer generated and therefore no signature is necessary, have been brought to our notice. Such practices are violation of instructions contained in Uniform Regulations and Rules for Bankers' Clearing Houses (URRBCH) which is issued under Payment and Settlement Systems Act 2007 read with Payment and Settlement Systems Regulations 2008.

Banks are, therefore, advised to strictly adhere to the instructions and sign/initial the Cheque Return Memos as laid down in Rule 6 of URRBCH.

Yours faithfully,

(Pankaj Ekka)

Deputy General Manager "

6. In view of the guidelines it can be predicated that not signing the cheque return memo by the Bankers and issuing them without any signature will be violation of the instructions contained in uniform regulations and rules of bankers. Hence the petitioner cannot be benefited by the law laid down in *Guneet Bhasin (Supra)*. On this aspect the learned trial Court, relying upon the judgment of this Court rendered in *Satyendra Tiwari (Supra)* opined that dishonor memo of bank without seal has no evidentiary value as a public document and it would be treated as only a mere piece of paper. The aforesaid law laid down in *Satyendra Tiwari (Supra)* still holds the field hence the contentions of petitioner as to accepting the endorsement memo (Ex.P/2) is evidently found without merits.

7. Moreover in conspectus of the aforesaid discussions in entirety the finding of the learned trial Court appears to be proper and immaculate. It is well settled principle of law that unless the judgment of acquittal is palpably wrong or grossly unreasonable and unrealistic, interference in the application for leave to appeal filed by the petitioner is not called for.

8. On this aspect, the law laid down by Hon'ble Apex Court in a recent judgment of *Ballu @ Balram @ Balmukund and Anr. Vs. State of M.P. [2024 Law Suit (SC) 279]* decided on **02.04.2024**, is worth referring here :-

"20. The High Court could have interfered in the criminal appeal only if it came to the conclusion that the findings of the trial Judge were either perverse or impossible.....

21. In any case, even if two views are possible and the trial Judge found the other view to be more probable, an

interference would not have been warranted by the High Court, unless the view taken by the learned trial Judge was a perverse or impossible view."

9. In view of the aforesaid, the application of leave to appeal against acquittal is hereby dismissed. Resultantly, this appeal is hereby dismissed.

10. Registry is directed to send a copy of this order to the trial Court concerned for information.

Certified copy, as per Rules.

(PREM NARAYAN SINGH)
JUDGE

sumathi

