Before Vinod S. Bhardwaj, J.

M/S V2B INFRA THE PROPRIETOR — *Appellant*

versus

M/S DISC LTD KMP EXPRESSWAY PROJECT AND ANOTHER —*Respondents*

CRA-AS No. 39 of 2022

March 24, 2022

Negotiable Instruments Act, 1881— Ss. 118, 138, 139— Appeal against judgment of acquittal by Judicial Magistrate in complaint case— Failure to establish legally enforceable laibilty— Two cheques issued for same work as complainant did not execute work after first work order—Cheque not issued against legally enforceable debt—No illegality, perversity or mis-appreciation of evidence by Trial Court— Appeal dismissed.

Held, that the burden lay upon the appellant-complainant to establish that the complainant had performed the work against the said order for which the advance had been issued. The said fact cannot be presumed and the burden lay upon the appellant-complainant to establish their entitlement to seek encashment of the said cheque. The presumption under Section 118 read with Section 139 of the Negotiable Instruments Act, 1881 stood duly rebutted by the respondent-accused by explaining the totality of the circumstances and also the fact that two cheques were issued with respect to the same work although two separate work orders were issued only for the reason that the appellant-complainant had not executed the work after thefirst work order and had approached the respondent-accused again with an assurance to complete the same.

(Para 11)

Jagjot Singh, Advocate, *for the appellant.*

VINOD S. BHARDWAJ. J. (Oral)

(1) The present appeal has been preferred against the judgment passed by the Judicial Magistrate First Class, Faridabad in complaint bearing No.RBT-1290/15.03.2016 titled as *"M/s V2B Infra versus M/s DSC Limited KMP and another"* under Section 138 of the Negotiable Instruments Act, 1881.

(2) That as per the brief factual matrix, the appellant-complainant is a proprietorship concerned which is engaged in the works of a Civil Contractor. It was alleged that the respondent-accused Company was constructing the KMP Expressway and it had granted a contract to the appellant-complainant to work at its Kundli Manesar Palwal Expressway. The appellant-complainant had deployed machinery and work force at the aforesaid site and several running account bills had been raised against the respondent-accused. In order to discharge such liability, the respondent- accused had issued a cheque bearing No.373149 dated 12.09.2011 for sum of Rs.11,46,600/- drawn on IDBI Bank, New Delhi, in favour of the appellant-complainant towards part payment. However, when the said cheque was presented for encashment to its banker, the same was returned unpaid with remarks "Payment stopped by drawer" vide return memo dated 23.02.2012. A legal notice dated 07.03.2012 was served upon the respondent-accused, however, payment was not made resulting in institution of the complaint. The respondent-accused was summoned to face prosecution. Notice of accusation under Section 251 of the Code of Criminal Procedure, 1973 was served to which he pleaded not guilty and claimed trial. The respondent-accused also opted to cross-examine the complainant and an application was moved under Section 145 of the Negotiable Instruments Act where upon they were permitted to cross-examine the appellant- complainant.

(3) The appellant-complainant had appeared as a witness and had tendered the following documents:

"Ex.C-1: Original cheque

Ex. C-2: Return memo dated 23.02.2012

Ex. C-3: Legal Notice dated 07.03.2012

Ex. C-4:

& Postal receipts

Ex. C-5:

Ex.CW1/A: Copy of work order"

(4) In defence, the respondent-accused examined Aaditya Jai Singh as DW-1 and proved the following documents:

Ex. DW1/A: Copy of transactions inquiry

Ex. DW1/B: Letter dated 04.04.2017

Ex.DW1/C Letter dated 28.03.2017

(5) They also led evidence of Dr. R.K. Saini and had also relied upon the following documentary evidence:

Ex.D-1: Copy of cheque No. 373148

(6) Upon consideration of the respective evidence as well as the documents brought on record, the trial Court was of the opinion that the appellant-complainant failed to establish existence of a legally enforceable liability as he could not establish the execution of the work order. The Court thus acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act. Aggrieved thereof, the instant appeal has been preferred.

(7) Learned counsel appearing on behalf of the appellant has submitted that the Trial Court has failed to appreciate the dispute in its entirety and the reasoning adopted by the trial Court is not valid and sustainable. It is argued that there were two work orders. The appellant-complainant was given the first work order dated 30.08.2011 for providing two excavators on hiring basis for Rs.6.30 lacs and the other work order was also issued on the same date for hiring ten hywa trucks for one month for a consideration of Rs.11,70,000/- , as per the work order, payment in advance vide cheque No. 373148 for a sum of Rs. 6,17,400 lacs dated 12.09.2011 was issued for hiring the excavators and similarly cheque No. 373149 dated 12.09.2011 for an amount of Rs. 11,46, 600/- for hiring ten hywa trucks. The cheque issued against work orders were presented for encashment despite not executing the work and despite having received fresh cheques for the work and that the 'stopped payment' instructions were issued on 03.10.2011.

(8) In so far as the second cheque for the same amount is concerned, the same was given against the subsequent work order dated 21.09.2011 and that the confusion was sought to be created by the respondent-accused persons to take unfair advantage and to deny the discharge of liability.

(9) A perusal of the judgment passed by the trial Court shows that a specific plea had been raised by the respondent-accused that the payment of Rs.6.17 lakh was made to the appellant-complainant against the work order dated 30.08.2011, for the hiring of two excavators, however, the said work was never performed. One more work order

was also issued to the appellant- complainant for hiring of 10 Hywa trucks and that an advance cheque of Rs.11,46,600/- was issued. However, the appellant-complainant did not execute any of the said work and as a result thereof, instructions of 'stop payment' were issued to the banker with respect to the said cheque. The appellant-complainant thereafter approach the respondent-accused persons and assured that the work in question would be performed. Relying on such assurance, a fresh cheque of the same amount of Rs.11,46,600/- was issued to the appellant-complainant which was duly encashed. It was submitted that owing to a misplaced faith, the respondent-accused did not ask for return of the previous cheques and more-over instructions of stop payment had already been issued. However, the appellant-complainant presented the said cheque. It has also been argued that as the said cheque was issued against mobilization advance and it was not issued in discharge of any legally enforceable debt/liability, especially when work was not executed, hence, the dishonour thereof would not attract offence under Section 138 of the Negotiable Instruments Act. He submits that the amount was an advance payment for providing 10 hywa trucks/tippers as per the work order dated 30.08.2011, but, as the same were not provided by the appellant- complainant, hence, the cheque in question cannot be presumed as an instrument to have been executed in discharge of pre-existing liability and legally enforceable debt. It was essential for the appellant-complainant to establish that he had executed the work orders & was thus entitled to claim the amount.

(10) The Trial Court has considered all the relevant facts and discuss the evidence while recording its findings that are extracted herein after below :-

> "13. In order to rebut the presumption under section 139, the accused has stepped in the witness-box as DW1 and stated that accused company is constructing KMP Expressway and complainant was given work order dated 30.08.2011 for providing two excavators on hiring basis for Rs. 6,30,000/- and other work order of same dated for hiring ten hywa trucks for one month for consideration of Rs. 11,70,000/-. As per the work orders the payment was made in advance to the complainant vide cheque no.373148 dated 12.09.2011 for Rs. 6,17,400/-, which was for hiring of two excavators, after deducting the TDS. Similarly, the cheque no. 373149 dated 12.09.2011 for an amount of Rs. 11,46,600/-(hereinafter to be referred as "Cheque in question") was

given for hiring of ten hywa trucks. However, complainant encashed the cheque for the amount of Rs. 6,17,400/-, but not supplied the excavator or hywa trucks. Hence the payment qua cheque in question was stopped by the accused by issuing "stop payments" directions to his banker.

14. As per the accused company, the complainant again approached to the accused company and assured that he will complete the work order and also execute the work of excavation of rock and breaking the stone in small size of 500 mm. Hence a work order dated 21.09.2011 was executed for Rs. 60,00,000/-, which includes the earlier work order also. The one of the condition of this work order was that accused were liable to make the advance payments for an amount of Rs. 17,64,000/- and same was to be adjusted in this work order. The amount of Rs. 17,64,000/- was to include Rs. 6,17,400/- already received by encashment of earlier cheque and Rs. 11,46,600/- was in lieu of cheque in question, for which the payments was stopped. Hence, the accused issued a fresh cheque no. 373154 dated 05.10.2011, for this amount of Rs. 11,46,600/- . This cheque was encashed on 14.10.2011. This fact is proved by DW Aditya Jai Singh, Asst. Manager of IDBI Bank, vide Bank statement as DW1/A.

15. So, it is proved by the accused company has issued " stop payments" instructions qua the cheque in question and the account statement of accused company as proved by DW Aditya Jai Singh, Asst. Manager of IDBI Bank, vide Bank statement as DW1/A, is sufficient to show that sufficient amounts was in the account of the accused company, when the cheque in question was issued as well as when it was presented to the banker. Even, the accused company has also proved the fact that subsequent cheque for the same amount i.e. 11,46,600/- was encashed on 14.10.2011, which was issued subsequently and bears the serial number of same series, which are after the cheque in question. So, the complainant has received the payments of the cheque in question by encashment of the fresh cheque no. 373154 dated 05.10.2011, for this amount of Rs. 11,46,600/-. Even, the amount of the cheque in question and cheque no. 373154, which was encashed is exactly same,

which shows that the complainant has received the same amount.

16. Learned counsel for the complainant heavily relied on the page No.4 of Ex. DW1/A, which is a bill raised by the complainant for execution of work in view of the work order raised by the accused. On perusal of the said bill dated 20.01.2012, the total amount of bills is Rs. 5,87,422/-. Even this contention of the complainant is accepted then also he has executed the work only for Rs. 5,87,422/-, whereas the accused have proved the payment of Rs. 17,64,000/-. On the other hand this bill itself sufficient to show that the complainant has not executed any work except for the bill dated 21.01.2012, which is for Rs. 5,87,422/-.

17. Even, the complainant has not proved anything on the case file that he has completed the work order. So, when a cheque is issued as advance payment for some work and for any reason the agreement/ work order is not carried to its logical conclusion, cheque cannot said to be drawn for existing liability. So, the onus to prove the liability shifts back on the complainant. Moreover, the cheque in question bears the date 12.09.2011, whereas the subsequent cheque of the same amount is issued on 05.10.2011 and encashed on 14.10.2011, creates doubt on the story of the complainant. Hence, the defence of the accused company that he has issued a subsequent cheque in lieu of cheque in question appears to correct.

18. Otherwise also, the cheque in question was issued as advance payments for the work order dated 30.08.2011, to be executed by the complainant. But complainant failed to execute the said work order and the earlier work orders dated 30.08.2011 were replaced by new work order dated 21.09.2011, for which the separate cheques were issued subsequently. So, the cheque in question was not issued for any legally enforceable liability but as an advance for the execution of the work. So, it was for the complainant to prove that he has executed the work order, to prove the legally enforceable liability. In the case of **Indus Airways Private Limited v. Magnum Aviation Private Limited, (2014) 12 SCC** 539 the Hon'ble Supreme Court has defined the concept of legally enforceable liability as under:

> "The explanation appended to Section 138 explains the meaning of the expression 'debt or other liability' for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an exiting debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability

(11) The burden lay upon the appellant-complainant to establish that the complainant had performed the work against the said order for which the advance had been issued. The said fact cannot be presumed and the burden lay upon the appellant-complainant to establish their entitlement to seek encashment of the said cheque. The presumption under Section 118 read with Section 139 of the Negotiable Instruments Act, 1881 stood duly rebutted by the respondent-accused by explaining the totality of the circumstances and also the fact that two cheques were issued with respect to the same work although two separate work orders were issued only for the reason that the appellant-complainant had not executed the work after the first work order and had approached the respondent-accused again with an assurance to complete the same.

LEGAL POSITION IN APPEAL AGAINST ACQUITTAL

(12) The same now leads to the scope of interference by the High Court while hearing appeal against acquittal. The Hon'ble Supreme Court has held in the matter of ***M. G. Aggarwal*** *versus* ***State of Maharashtra***[1], as under:

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[1] AIR 1963 SC 200

"(16) Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court ;naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt

or innocence of the accused. this position has been clarified by the Privy Council in Sheo Swarup v. The, King Emperor (1) and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17) some of the earlier decisions of this Court, however, in emphasizing the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for (1) (1934) L.R. 61 1. A. 398. (2) A.I.R. 1945 P.C. 151, very substantial and compelling reasons": vide Surajpal Singh v. The State (1). Similarly in Ajmer Singh v. State of Punjab (2), it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so.') In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended- to introduce an additional condition in clause (a) of Section 423 (1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Shoo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial." Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan (2) and Harbans Singh v. The State of Punjab (4); and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Therefore, the question which we have to ask ourselves in

> the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the (1) (1952) S.C.R. 193, 201. (2) (1953) S.C.R 418 (3) (1961) 3 S C. R. 120. (4) (1962) Supp. I.S.C.R 104. prosecution case against the appellants had been proved beyond a reason-able doubt, and that the contrary view taken by the trial Court was, erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.

(13) Further, the Hon'ble Supreme Court has held in the matter of ***Nagbhushan*** *versus* ***State of Karnataka***[2]**,** as under:

> "**7.2** Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.
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> 7.2.1 In the case of Babu v. State of Kerala (2010) 9 SCC 189, this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:
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> 12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the

[2] (2021) 5 SCC 212

evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama v. S.Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P. (2009) 16 SCC 98 and Ram Singh v. State of H.P. (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "… 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."

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42) "(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach

its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, 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.

(5) If two reasonable conclusions 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."

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) "20. … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanpal v. State (2009) 10 SCC 401.

19. 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. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference." (emphasis supplied) When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding

may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v.State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P.(2009) 10 SCC 636)." (emphasis supplied)

It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

7.3 In the case of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope o Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233) "10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the

> same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."
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> 31.4. In K.Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule." (emphasis supplied)."

(14) The obligation was thus, shifted on to the appellant-complainant to establish that both the work orders had been duly carried out by the complainant and that they were entitled to the said payment upon successful execution of the work order.

(15) Having considered the submissions advanced by the appellant as well as the facts noticed by the Trial Court, I do not find that the appellant-complainant has been able to lead any evidence to establish that the cheque in question was issued against a legally enforceable debt. There is no illegality, perversity or mis-appreciation of evidence by the Trial Court. It cannot be held that the findings recorded by the Trial Court are perverse and unsustainable on the strength of the evidence brought before.

(16) The instant appeal is devoid of any merit and is accordingly dismissed.

Shubreet Kaur