

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM-A-138 of 2023
Date of Decision: 14.12.2023**

M/S GURU NANAK STEELS**..... Appellant**

Versus

**M/S KAMDHENU INTERNATIONAL
AND ANOTHER****..... Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Sandeep Vermani, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J (ORAL)

1. The instant application under Section 378(4) CrPC is preferred against the order of acquittal dated 18.10.2022 passed by learned Judicial Magistrate Ist Class, Ludhiana vide which the present respondents have been acquitted in criminal complaint No. COMA/6607/2016 dated 11.09.2015 filed under Section 138 of Negotiable Instruments Act, 1881 (herein after referred as NI Act) read with Section 420 of IPC.

2. The minimal facts as necessary for disposing this application are that the applicant-appellant is a partnership concern (contending through its authorized partner Mr. Maninder Pal Singh) which deals in sale of TMT Bar. Respondent no. 1 is a proprietorship concern (where respondent no.2 is its proprietor) which had purchased TMT Bars from the applicant-appellant on credit basis against bills from time to time. The respondents had been taking delivery of the goods and had been making part payments thereof.

The applicant-appellant maintains account books in the ordinary course of

its business, from thereof, adjusting all the said part payments, an amount of Rs.26,37,917/- was found to be due against the respondents. In order to partly discharge their legally enforceable liability towards the applicant-appellant, respondents issued a cheque bearing No.681960 dated 18.11.2014 for an amount of Rs.15,00,000/- in his favour. On presentation, the said cheque was dishonoured by the bank of respondents with remarks 'Payment Stopped by Drawer' vide memo dated 13.01.2015. The respondents failed to pay the requisite amount inspite of legal notice dated 22.01.2015 served upon them by the applicant-appellant due to which the said criminal complaint ensued.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clear that after diligent appreciation of the complete evidence on record, the learned trial Court correctly concluded that the applicant-appellant/complainant failed to bring on record any evidence, oral or documentary, which could establish the guilt of the respondents since the most important ingredient to be proved by the applicant-appellant/complainant, i.e., whether the cheque in question was returned unpaid by the drawee bank was not proved since the return memo in question(Ex.C20) carries no stamp, signature or official logo of the drawee bank. Furthermore, the certificate u/S 65 B of Indian Evidence Act along with the ledger statement was not produced.

4. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the

trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. **(See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415).** A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit** and others CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

5. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

14.12.2023
D.Bansal

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No