

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CRM-A-2204-MA-2017
Date of Decision:11.12.2023

RAJ KISHAN

...APPLICANT

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr.R.P Verma, Advocate for the applicant-appellant.

Mr. Vikas Bhardwaj, AAG Haryana.

None for respondent no.2.

HARPREET SINGH BRAR, J. (ORAL)

The instant application under Section 378(4) Cr.P.C. is preferred against the order of acquittal dated 06.06.2017 passed by learned Judicial Magistrate Ist Class, Sonipat vide which, the accused-respondent no.2 has been acquitted in criminal complaint CIS No. 6172/2014 dated 18.07.2014 filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act').

2. The facts, briefly, are that the complainant-applicant Raj Kishan has alleged that he alongwith the accused-respondent no.2 purchased a Maruti Car bearing No.HR-10R-7916 by way of raising loan from HDFC Bank, Sonipat in the month of September, 2010. No document regarding the partnership between respondent no.2 and applicant for the purchase of the car

was prepared. However, after purchasing the car, the abovesaid loan was cleared by both the parties jointly in the month of April, 2014. It is further alleged that on 28.05.2014, the partnership between the parties was dissolved mutually and the price of said vehicle was assessed at Rs.4,40,000/- and half the price of the abovesaid vehicle i.e Rs. 2,20,000/-, was promised to be paid by the respondent no.2 in a period of one month to the applicant. In discharge of his liability, respondent no.2 issued a cheque bearing no.013281 dated 28.05.2014 and the same was returned unpaid vide return memo with remarks “funds insufficient.” Thereafter, a legal notice was served upon respondent no. 2 on 21.06.2014 within the stipulated time but all in vain.

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 failed to bring on record any evidence, oral or documentary, which could establish the guilt of the accused as the car in question independently belongs to respondent no.2 and the applicant has no right on it. The applicant in his cross examination, stated that he had purchased the car to the tune of Rs.2,35,000/- and the value of the car was fixed as Rs.4,40,000/- at the time of dissolution of partnership. It is unlikely that the value of the car increased to Rs. 4,40,000/-, when it was purchased at Rs. 2,35,000/- in 2010. Hence, as the car never belonged to applicant, the question of respondent no.2 issuing a cheque in favour of the applicant for paying him back for his share in the car does not arise.

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* bearing No.*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 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.

December 11, 2023
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |