

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

223

CRM-A-662-MA-2018

Date of Decision: 14.12.2023

Kuldeep Singh**..... Appellant**

Versus

Sonia Kumari**..... Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Arun Kumar, Advocate
for the applicant-appellant.

None for the respondent.

HARPREET SINGH BRAR, J (ORAL)

1. The present application is preferred against the judgment of acquittal dated 12.12.2017 passed by Judicial Magistrate Ist Class, Chandigarh in criminal complaint no. 415 dated 15.01.2016 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

2. Briefly, the facts are that the respondent-accused had borrowed a sum of Rs. 2,00,000/- from the applicant-complainant on 26.12.2014. The respondent issued a cheque dated 23.11.2015 for Rs. 2,00,000/- which was dishonoured on presentation for encashment vide memo dated 30.11.2015 with the remarks 'payment stopped.' Thereafter a legal noticed dated 07.12.2015 was served upon the respondent. However, the respondent failed to make the requisite payment and the present complaint was filed, in which she was acquitted vide the impugned judgment.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that the applicant-complainant has neither placed his Income Tax Return for the year 2014 on record nor examined his wife in whose presence the alleged loan was advanced to the respondent to prove his case. Further, the name 'Shiva Refrigeration' has been mentioned on the cheque in question and the respondent has proved that she had lost the disputed cheque regarding which she had filed an application with the police (Ex. DW1) in pursuance of which DDR No. 12 was registered (Ex. DW1/A). As such, the respondent has been successful in rebutting the statutory presumptions of Section 118 and 139 of the NI Act.

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** passed in 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