

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

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**CRM-A-687 of 2020
Date of Decision: 14.12.2023**

Pardeep Kumar

..... Appellant

Versus

Ashwani Syal

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhishek Goyal, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J (ORAL)

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 13.12.2019 passed by learned Judicial Magistrate Ist Class, Sunam in criminal complaint no. NACT/52/2016 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. 8,00,000/- from the applicant-complainant on 01.06.2015 and agreed to return the same within 6 months with an interest at the rate of 12% p.a.. The respondent issued a cheque bearing no. 721058 for Rs. 8,00,000/- which was dishonoured on presentation for encashment vide memo dated 19.01.2016 with the remarks 'insufficient funds.' Thereafter, on 01.02.2016, a legal notice was sent to the respondent. However, the respondent failed to make the requisite payment and the present complaint was filed, in which he 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 disputed cheque was given to the applicant-complainant as security along with other blank cheques during the execution of agreement between the applicant and wife of the respondent (Ex. R1). The said agreement was later cancelled vide Ex. R2 and the applicant had received a sum of Rs. 8,00,000/- in cash from the respondent and his wife in the presence of RW1-Yashwant Rai. However, the applicant failed to return the blank cheques issued as security to the applicant. As such, the respondent has been successful in rebutting the statutory presumptions as provided in Sections 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 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