

**226 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-A-1139-2023 (O&M)

Date of Decision: 20.12.2023

M/s Sidhu Beej Bhandar

.....Applicant-Appellant

Versus

Gurdeep Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Ms. Prabhjot Kaur, Advocate
for the applicant-appellant

None for the respondent.

Harpreet Singh Brar, J. (Oral)

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This is an application under Section 5 of Limitation Act seeking condonation of delay of 15 days in filing the accompanying application.

For the reasons mentioned in the application, same is allowed and the delay in filing the accompanying application is condoned.

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1. The present application is preferred under Section 378(4) of the Cr.P.C. against the Judgment of acquittal dated 22.05.2023 passed by learned Sub-Divisional Judicial Magistrate Dabwali, Sirsa in Criminal Complaint bearing No. NACT/521/2018 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

2. Briefly, the facts are that the petitioner is in the business of wheat, cotton and commission agency at Mandi Kalanwali, Tehsil Kalanwali, District Sirsa. The instant complaint has been registered by Manjinder Singh, proprietor of the petitioner-firm. On 19.12.2016 the respondent-accused approached the complainant and requested for a loan of Rs. 10,000/- for household needs.

Thereafter, the respondent visited the shop of the complainant and sold cotton crop

for a sum of Rs. 1,35,080/-. The respondent approached the complainant again on 18.01.2017 to purchase fertilizers and raised a demand of Rs. 75,000/- and the same was given to the respondent by the complainant through RTGS. On 29.06.2017, the respondent approached the complainant again and demanded for a sum of Rs. 6,41,000/- to be lent to him as loan. The said amount was transferred to the respondent through NEFT. At the end of the year, Rs. 5,90,920/- was found standing against the respondent. The respondent failed to repay the complainant in spite of involvement of the panchayat. However, on 19.05.2018, the respondent requested the complainant to loan him an amount of Rs. 2,00,000 and considering the respondent to be in genuine need, the complainant issued a cheque dated 19.05.2018 for Rs. 2,00,000/- in favour of the respondent. At the time of receiving the cheque, the respondent assured the complainant that he will sell his upcoming crop through his agency, which he later failed to comply with. In order to discharge his liability, the respondent issued a cheque bearing no. 741701 dated 21.10.2018 for Rs. 6,00,000/- as part payment in favour of the complainant. The same was dishonoured on presentation for encashment vide memo dated 23.10.2018 with the remarks 'funds insufficient.' Thereafter, on 31.10.2018, a legal noticed was issued 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 petitioner, in order to prove the existence of a legally enforceable debt, has only examined Manjinder Singh, the proprietor of the petitioner-firm who presented computerised account books as (Ex C2 to Ex C5). Admittedly, there is a pre-existing *arhant* relationship between the complainant and the respondent, as such, if a payment

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has been made by the petitioner to the accused, it cannot be assumed to be a loan, unless otherwise proved. The account books exhibited by the petitioner cannot equated with a promissory note. No explanation was presented by the petitioner as to why loans were given without recording the same in form of an agreement or pronote. Further, the account books showing the acknowledgment of the amount received do not bear the signature of the respondent.

4. Moreover, the petitioner did not record the sale of cotton for Rs. 1,35,080/- on 06.01.2017 in the prescribed 'J' form, a copy of which is supposed to be kept by the each farmer. The petitioner has failed to produce the 'J' form on record which reflects that they were not conducting business in accordance with the law. Furthermore, the respondent has made a specific aversion that the petitioner kept two blank cheques as security and one of them been misused by the petitioner to file the present case. As such, the respondent has been successful in rebutting the statutory presumptions of Section 118 and 139 of the NI Act.

5. 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.

6. 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.

(HARPREET SINGH BRAR)
JUDGE

20.12.2023
AJay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No