

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

229

**CRA-AS-268-2019 (O&M)
Date of Decision: 01.12.2023**

Balwinder Kumar

..... Appellant

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. N.S. Gill, Advocate and
Mr. Munish Gupta, Advocate
for the applicant-appellant.

Mr. I.P.S. Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR, J (ORAL)

1. This instant application under Section 378(4) CrPC is preferred against the order of acquittal dated 03.08.2019 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib vide which the present respondents have been acquitted in FIR No. 154 dated 14.08.2016 registered under Sections 406, 420 of IPC at police station Fatehgarh Sahib.

2. The minimal facts as necessary for disposing this application are that in the present case, law was set into motion on 17.05.2016 when the applicant-appellant moved an application to SSP, Fatehgarh Sahib for taking action on account of fraud committed against him by respondent no.2 as purchased cattle-feed from the applicant on credit basis but failed to make payments against an outstanding balance of Rs.4,67,000/-. Thereafter, the said application was marked to EO Wing Fatehgarh Sahib and after an

inquiry, the above-mentioned FIR was lodged against respondent no.2. After completion of investigation, respondent no.2 was put to trial.

3. Having heard the learned counsel for the applicant-appellant and after perusing the record with his able assistance, it is clear that respondent no.2 used to purchase cattle-feed from the applicant on credit basis as well as on cash payments. He had even issued 15-20 blank cheques in favour of the applicant which were still in applicant's possession. Hence, the learned trial Court has correctly concluded that there was no intention on part of respondent no.2 to deceive the applicant at the time of transaction and that the dispute between the applicant and respondent no.2 is purely of civil nature.

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.

01.12.2023
D.Bansal

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No