

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-300-2022
Date of Decision: 06.02.2024

Gursahib Singh

.....Applicant-Appellant

Versus

Amarjit Singh

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present: Mr. J.K Singla, Advocate
for the applicant-appellant

HARPREET SINGH BRAR, J. (ORAL)

1. This instant application under Section 378(4) Cr.P.C. is preferred against the judgement dated 26.11.2021 passed by learned Judicial Magistrate Ist Class, Mansa in criminal case No.121 dated 22.05.2018 filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) vide which the aforesaid complaint has been dismissed, thereby, acquitting the respondent.

2. The facts, in brief, are that allegedly the respondent borrowed a sum of Rs.1,00,000/- from the applicant-appellant on 10.10.2017 and for repayment of the same, issued a cheque bearing No.939987 dated 28.12.2017 amounting to Rs. 1,00,000/- in favour of the applicant. Upon its presentation before the concerned bank for encashment, the said cheque was dishonoured and returned unpaid by the banker of the applicant vide memo dated 23.03.2018 bearing remarks 'Funds Insufficient'. Thereupon, the applicant issued a demand notice to the respondent calling upon him to repay the said cheque amount, but to no avail.

Aggrieved, the applicant preferred the above said complaint against the

respondent.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, this Court finds absolutely no merit in the present case. From a combined perusal of the contents of the complaint and the examination-in-chief of the applicant-complainant (Ex.CW1/A), it is manifestly clear that the applicant has failed to provide crucial details qua the alleged transaction. Neither the mode of alleged transaction nor the reason or tenure of alleged loan has been mentioned by the complainant. Further, a perusal of the cross-examination of the applicant shows that he did not have the requisite paying capacity to forward the alleged loan amount to the respondent. The plea taken by the applicant that he himself borrowed a sum of Rs.70,000/- from Yog Raj on interest and then gave it further to the respondent, that too interest free, is to completely unpalatable. Moreover, the applicant did not bother to examine said Yog Raj as a witness in support of his case. Further, the applicant had admitted in his cross-examination that the respondent is an illiterate person but did not mention anywhere as to who filled the text in the body of the cheque in question. All of this leads to an adverse inference against the case of the applicant.

4. Furthermore, 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.

(HARPREET SINGH BRAR)
JUDGE

February 06, 2024

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