

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

CRM-A-223-2020

Date of decision: 18.01.2024

Amar Singh

....Applicant/Appellant

Versus

Rajbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. S.S. Dinarpur, Advocate
for the applicant/appellant.**HARPREET SINGH BRAR, J.**

1. The present application is preferred under Section 378 (4) of the Cr.P.C. against the judgment of acquittal dated 06.12.2019 passed by learned Judicial Magistrate 1st Class, Bilaspur in criminal complaint no. 194/2 of 2015/RBT-99 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. 21,00,000/- from the applicant-complainant on 15.02.2015 on interest at the rate of 2% p.m. with a promise to repay the same in May 2015. A pronote was also executed in favour of the applicant in the presence of attesting witnesses. The respondent issued a cheque bearing no. 204952 dated 06.05.2015 for Rs. 21,00,000/- in favour of the applicant, which was dishonoured on presentation for encashment vide memo dated 11.05.2015 with the remarks 'Insufficient Funds.' The applicant contacted the respondent, who assured him that the cheque will be encashed in the second week of July, 2015.

However, on presentation, the cheque was dishonoured yet again on 10.07.2015 with the remarks 'Insufficient Funds.' Thereafter, on 10.08.2015, a legal noticed was sent to the respondent. The respondent failed to make the requisite payment within the stipulated period of 15 days and the present complaint was filed, in which he was acquitted vide the impugned judgment dated 06.12.2019.

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 respondent has not denied his signature on the disputed cheque. However, in his cross-examination, the applicant has deposed that he was running a petrol pump in the year 2015 and his annual income for the year 2014-15 was in the range of Rs. 24,00,000/- to Rs. 25,00,000/-. Admittedly, his Income Tax Return does not reflect the loan of a considerable amount of Rs. 21,00,000/-. Conspicuously, neither has the applicant produced any sales tax returns to prove his income nor has he placed anything on record to prove his ownership of the petrol pump.

4. Furthermore, it is argued that a pronote (Ex. C9) was executed to advance the loan amount in presence of witnesses. Curiously, Ram Charan, who has scribed the pronote has not been examined by the complainant but he has appeared in the witness box as DW1 and testified that the loan amount was not handed over in his presence. He also stated that he does not have the license of a deed write, rather he is a typist who has been working as a deed writer for over the last two decades. Finally, a perusal of the account statement of the petitioner-complainant for the time period of 01.02.2015 to 18.12.2015 (Ex. D1) placed on record by the respondent-accused indicates that the petitioner never had such amount in his bank account to be able to lend the loan amount to the respondent. As such, the respondent has been able to put up a probable defence regarding the financial capacity of the complainant and in doing so, he

has successfully rebutted the presumption as envisaged under Section 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

18.01.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No