

CRM-A-878-2019

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233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-878-2019(O&M)

Date of Decision: 25.01.2024

M/S CAIR REFRIGERATION CORPORATION

...Applicant-Appellant

Versus

RAJESH KUMAR AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jai Bhagwan Sharma, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J. (ORAL)

CRM-15842-2019

This is an application under Section 5 of Limitation Act, 1961 seeking condonation of delay of 8 days in filing the accompanying application under Section 378(4) Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 08 days in filing the accompanying application is condoned.

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1. This instant application under Section 378(4) CrPC is preferred against the judgement dated 29.11.2018 passed by learned Judicial Magistrate Ist Class, Faridabad vide which the complaint case No.2721 of 16.12.2015 filed by the applicant firm through its attorney holder Shiv Hari Singla under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) was dismissed and the present respondents were acquitted.

2. The facts, in brief, are that the applicant an respondents were well acquainted with each other and in lieu of the existing relation, respondent no.1

namely Rakesh Kumar borrowed a sum of Rs.16,00,000/- from the applicant firm on 04.01.2011 and respondent no.2 namely Kailash Nath stood as guarantor for the repayment of the said loan amount. In order to repay the said amount, respondent no.1 issued a cheque bearing No.406408 dated 12.07.2013 of Rs.16,00,000/- in favour of the applicant. Upon its presentation to the bank for encashment, the said cheque was dishonoured with remarks 'Funds Insufficient' vide memo dated 29.07.2013. Consequently, a demand notice dated 27.08.2013 was issued by the applicant calling upon them to make the payment but no payment qua the cheque amount was made by the respondents. The applicant-complainant preferred a complaint before the learned trial Court which was dismissed, hence, the present appeal.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clearly made out that the applicant has failed in proving that the aforesaid cheque was issued by respondent no.1 to discharge his legal liability. As per the deposition of the applicant-complainant, goods worth Rs.16,00,000/- were supplied to the respondents but the applicant did not prove any bill/invoice or any written document qua the same. Even the concerned Income Tax Return documents have not been placed on record. Also, no document pointing towards the fact that respondent no.2 stood as guarantor qua the aforementioned transaction was proved on record by the applicant. Thereby, the observation made by the learned trial Court that the presumption as provided under Sections 138 & 139 of the NI Act was successfully rebutted by the respondent, stands validated.

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.

25.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>