

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

CRM-A-1311-MA-2016 (O&M)
Date of decision: 07.03.2024

Arvind Kumar Pandey

....Applicant/Appellant

Versus

Chandan Bansal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navneet Jindal, Advocate
for the applicant-appellant

Ms. Tarrannum Madan, Advocate for
Mr. C.K. Singla, Advocate for the respondent.

HARPREET SINGH BRAR, J.

CRM-22125-2016

This is an application under Section 5 of Limitation Act, 1961 seeking condonation of delay of 228 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 the delay of 228 days in filing the said application is condoned.

CRM-A-1311-MA-2016

1. This instant application under Section 378(4) CrPC is preferred against the judgement dated 27.08.2015 passed by learned Judicial Magistrate Ist Class, Chandigarh in Case No. 54/2015 vide which the complaint filed by the applicant-appellant under Sections 499/500 of IPC, was dismissed without summoning the respondent-accused.

2. The minimal facts as necessary for disposing this application are that, allegedly, the applicant-complainant and the respondent had an oral agreement vide which the applicant was to provide the built space/infrastructure to the respondent for running Mathematics Coaching classes whereas the respondent was to pay Rs.15,000/- per month to the applicant qua the miscellaneous expenses for running the said institute. The profit was to be shared equally between the parties. The respondent started the classes in January, 2010 and after three months started having apprehensions about the business. In order to reassure the respondent, the applicant issued a cheque no.537948 for Rs.2,00,000/- on 01.03.2010 in favour of the respondent. Then in March, 2011, the respondent requested the applicant to revalidate the aforesaid cheque and accordingly, the applicant revalidated the cheque on 01.03.2011. Soon after, the respondent stopped paying the agreed sum of Rs.15,000/- to the applicant. When in the next academic session, not enough students enrolled in their institute, the respondent started threatening the applicant to return the amount spent by the respondent for the institute or else he would use the abovesaid cheque. The applicant again tried to reassure the respondent and even told him that the account from which the abovesaid cheque was issued, had been already closed. Despite the reassurance, the respondent also filed a frivolous complaint under Section 138 of the Negotiable Instruments Act, 1881 against the applicant alleging that the respondent gave an amount of Rs.50,000/- four times to the applicant as a friendly loan, against which the applicant issued the abovesaid cheque to discharge his liability of Rs.2,00,000/-. However, the said complaint was dismissed by the learned Magistrate. Affronted by the frivolous nature of the said complaint and feeling that the same had lowered down the credit and his character in the society, the applicant

filed the complaint (supra) under Sections 499/500 of IPC against the respondent which was ultimately dismissed without summoning the respondent-accused. Aggrieved by the same, the applicant has approached this Court by way of the present petition.

3. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it is manifestly clear that there is no prima facie evidence to show that the complaint under Section 138 of NI Act was filed by the respondent with *malafide* intent. The concerned Magistrate has nowhere held that the said complaint was filed by the respondent with *malafide* intent rather the said complaint was filed on the basis of all the material available to the respondent. Simply because one of the parties, applicant in the present case, lost the case, it cannot be held that expected due care and caution was absent, as it is bound to happen in an Adversarial Justice System. Moreover, the complaint filed by the applicant falls within the ambit of exception 8 to Section 499 of IPC, i.e., accusations preferred in good faith to an authorized person, making the said complaint liable to be dismissed since Section 499/500 of IPC cannot be made out. Further, the applicant examined only himself to prove his version and failed to examine even a single witness to prove that his reputation had been lowered. Therefore, this Court is of the opinion that the learned trial Court has correctly recorded that there are no sufficient grounds for proceeding against the respondent-accused in the complaint (supra) filed by the applicant as it is a settled law that summoning of accused in a complaint is not to be done in a mechanical manner and rather has to satisfy itself after scrutinizing the evidence produced by the complainant that sufficient cause is made out for summoning of the accused.

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

07.03.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No