

...APPLICANT

KIRAN PAL

...RESPONDENT

Present: Mr. Tanuj Goyal, Advocate for the applicant.

HARPREET SINGH BRAR J. (ORAL)

The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 22.09.2015 passed by learned Judicial Magistrate 1st Class, Jind, District Jind, in a criminal complaint case, bearing no. RBT-D-103 of 2010, filed under section 138 of The Negotiable Instruments Act, 1881 (hereinafter 'NI Act' for brevity).

2. Briefly, the facts are that the respondent/accused was a family friend of the applicant/complainant and the former had a history of borrowing money from the latter. It is alleged in the complaint that since they were on friendly terms, the applicant extended a loan of Rs. 4,00,000/- to the respondent, in order to fund the respondent's son's medical education in Ukraine. The loan was disbursed in the month of May, 2007. The respondent assured to repay the loan amount with interest as soon as the respondent's son finishes his medical course. Once the said course finished and the respondent's son returned to India in July, 2009, the respondent demanded the loan amount with interest from the applicant, however, the respondent kept dilly-dallying on one pretext or the other. Finally, after one year, in order to discharge his liability, the respondent issued a post-dated cheque bearing no. 209435 dated 03.09.2010 amounting to Rs. 4,00,000/- drawn on ICICI Bank, Branch Yamuna Nagar, in favour of the applicant. Thereafter, on 28.09.2010, the

applicant deposited the above said cheque with his bank, Punjab National Bank, Jind, for encashment of the same. However, vide memo dated 07.10.2010, the above said cheque was returned unpaid with the remark, "Account Closed". Subsequently, the dishonour of the instrument was brought to the attention of the respondent, yet, he failed to pay his dues. Thereafter, a legal notice dated 04.11.2010 was served upon the respondent to call upon him to make the payment but to no avail. Hence, the complaint before the Magistrate.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that no material has been brought on record to prove that a transaction of Rs. 4,00,000/- took place between the applicant and the respondent. The applicant did not adduce any document to show the availability of Rs. 4,00,000/- or to assess his financial capacity. No specific date, on which the loan amount was given by the applicant to the respondent has been stated. The applicant neither had a PAN card nor paid any income tax. Further, no bank account statement of the relevant period was brought on record by the applicant. Since no material was brought forward by the applicant to prove the factum of legally enforceable debt, which is one of the essential ingredients of Section 138 of the NI Act, the respondent was rightly acquitted.

4. Furthermore, the name of the applicant on the cheque bore a different ink from the ink used to sign the cheque. The testimony of the applicant reveals that the respondent did not sign or fill the cheque amount in his presence. Moreover, no person was examined by the applicant who witnessed the respondent handing over the cheque to the applicant. This fact coupled with the version of the defence that the cheque in question was lost by the respondent and that there is a possibility of the same falling in the hands of

the applicant, makes the prosecution case doubtful. As a result, the prosecution failed to prove the guilt of the respondent beyond the shadow of reasonable doubt.

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.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

February 22, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- | | | |
|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |