

201 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CRM-A-998-MA-2013 (O&M)
Date of Decision: 15.02.2024

Zulfi RamApplicant-Appellant

Versus

Satnam SinghRespondent

CRM-A-1042-MA-2013 (O&M)
Date of Decision: 15.02.2024

Naresh KumarApplicant-Appellant

Versus

Satnam SinghRespondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunil Kumar Sahore, Advocate
for the applicant-appellant
None for the respondent.

Harpreet Singh Brar, J. (Oral)

CRM-47684-2013 in CRM-A-998-MA-2013

1. This is an application under Section 5 of the Limitation Act, 1971 seeking condonation of delay of 360 days in filing the instant application under Section 378(4) of the Cr.P.C.

2. For the reasons mentioned in the application, the same is allowed and the delay of 360 days in filing the said application is condoned.

CRM-49270-2013 in CRM-A-1042-MA-2013

1. This is an application under Section 5 of the Limitation Act, 1971 seeking condonation of a delay of 370 days in filing the instant application under Section 378(4) of the Cr.P.C.

2. For the reasons mentioned in the application, the same is allowed and the delay of 370 days in filing the said application is condoned.

CRM-A-998-MA-2013

1. This common order shall dispose of both the above mentioned applications under Sections 378(4) as they arise from similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-A-998-MA-2013.

2. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 19.09.2012 passed by learned Judicial Magistrate Ist Class, Anandpur Sahib in criminal complaint no. 148 dated 03.12.2007 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

3. Briefly, the facts are that the respondent-accused had borrowed a sum of Rs. 1,66,000/- from the petitioner-complainant for business purposes. To discharge his liability, the respondent issued a cheque bearing no. 879768 dated 20.10.2007 for a sum of Rs. 1,66,000/-. On presentation for encashment, the same was dishonoured vide memo dated 25.10.2007 due to 'insufficient funds'. Thereafter, a legal notice dated 04.10.2007 was served upon the accused to call upon him to make the payment. However, since he failed to make the requisite payment in the stipulated time period, the instant complaint was filed.

4. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that M/s Vir Enterprises was granted a contract for carrying salt by PACL from June 2007 to June 2008. Understanding the work to be beyond his capacity, the respondent brought in the petitioner as a partner who further joined Naresh Kumar and Mahavir Soni as partners within his half share, while the respondent joined his brother-Satveer Dhaliwal as a partner in his share. On 15.06.2007, the petitioner, the respondent, Mahavir Soni and Naresh Kumar had entered into a partnership and the partnership has been proved on record by CW4-Jawala Parshad Sharma. The petitioner

imposed a condition on the respondent to issue a guarantee/security cheque in exchange of his support.

5. In his cross-examination, the petitioner-complainant (CW1), has admitted that as per the terms of the partnership agreement entered into by parties, each partner was responsible for the profit and loss in the business to the extent of their share. He has also categorically admitted that the disputed cheque was issued to him as a security. As such, the case of the complainant stood negated as the respondent accused has been successful in rebutting the presumption under Section 139 of the NI Act.

6. 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.

7. 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 applications and hence, the leave to appeal is denied.

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

15.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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