

CRM-A-1191-MA-2017(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1191-MA-2017(O&M)

Date of Decision: 08.02.2024

Baljit Singh

.....Applicant-Appellant

Versus

Prabhjot Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. A.K. Walia Advocate
for the applicant-appellant

None for the respondent

Harpreet Singh Brar, J. (Oral)CRM-17494-2017

This is an application under Section 5 of the Limitation Act, 1971 seeking condonation of a delay of 46 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application the same is allowed and the delay of 20 days in filing the said application, is condoned.

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1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment dated 13.02.2017 passed by learned Judicial Magistrate Ist Class, Sangrur whereby respondent-accused has been acquitted in criminal complaint no. 224 dated 01.08.2015 under Sections 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. 3,50,000/- and repaid Rs. 50,000/-, with a promise to return the remaining amount soon. To discharge his liability, the respondent issued four cheques bearing

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28.02.2015 and 127094 dated 30.04.2015, each for an amount of Rs. 50,000/-, in favour of the petitioner. The cheque no. 127091 dated 31.01.2015 was dishonoured on presentation for encashment. The respondent requested the petitioner not to issue a legal notice and present the remaining cheques after 20.05.2015. In the month of May, 2015, the petitioner requested the respondent to repay him the remaining amount of Rs. 3,00,000/-. The respondent threatened to kill him and stated that he will commit suicide if the petitioner ever demand money from him in the future. The petitioner reported the matter to SSP Sangrur vide application dated 21.05.2015.

3. The complainant presented the remaining cheques no. 127092, 127093 and 127094 each for Rs. 50,000/- i.e. in total Rs. 1,50,000/-. All three cheques were dishonoured vide separate memos dated 25.05.2015 with the remarks- 'funds insufficient.' Thereafter, a legal notice dated 23.06.2015 was served upon the respondent, to call upon him to make the payment. However, since he failed to make the requisite payment in the stipulated time, 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 the petitioner failed to reveal the source of money. In his cross examination, the petitioner has admitted to the existence of a document (Ex. D13) stating that he had loaned Rs. 2,00,000/- to the respondent and that he had returned Rs. 1,75,000/- as on 16.05.2015. While the petitioner admitted the stamp, he denied the signatures on the document Ex D13. The disputed signature was compared with the standard signature of the petitioner by DW1 Dr. Inderjit Singh, Handwriting and Fingerprint Expert who opined that the signatures matched. Further, no one was examined to prove the advancement of the loan. In fact, the petitioner admitted that he did not make any efforts to recover the loan amount. Nothing has been produced to indicate that a

loan was advanced creating a legal liability. The respondent-accused has been able to put up a probable defence and hence, the presumption under Section 139 of the NI Act stands rebutted.

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.

08.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No