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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-2340-MA-2016
Date of Decision: 20.02.2024

THE FATEHABAD DISTRICT PRIMARY CO-OPERATIVE AGRICULTURAL & RURAL DEVELOPMENT BANK

.....APPLICANT

VERSUS

DHARAMBIR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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Present: - Ms. Priyanka Vij, Advocate for
Mr. Amit Kumar Jain, Advocate
for applicant.

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Harpreet Singh Brar, J. (Oral)

CRM-A-2340-MA-2016

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 24.10.2016 passed by learned Judicial Magistrate 1st Class, Tohana, District Fatehabad, in criminal complaint case, bearing no. 694 RBT/03.07.2012 filed under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter 'NI Act' for brevity).

2. Briefly, the facts are that on the request of the father of the respondent/accused, the applicant/complainant bank granted a term loan amounting to Rs. 3,00,000/- to him for the purposes of laying down an underground pipe line. Subsequently, the respondent/accused being the Special Power of Attorney of his father, issued a cheque bearing no. 518515 dated 02.05.2012 for a sum of Rs. 1,54,448/-, in order to discharge his father's legal liability and repay the said loan amount. Upon the encashment of the cheque, the same was returned unpaid with the remark, "insufficient

funds", vide return memo dated 23.05.2012. Thereafter, the applicant/complainant bank through its counsel served a legal notice dated 01.06.2012 upon the respondent/complainant to call upon him to make the payment, but the respondent/accused failed to pay the amount within the stipulated time period. Resultantly, the appellant filed a complaint before the trial Court.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with her able assistance, it transpires that the respondent successfully managed to rebut the presumption that the holder of the cheque received the cheque for discharge, in whole or part of debt or liability. While it is established that the respondent issued the cheque in question and the same was dishonoured, however, since the liability was barred by limitation, there did not exist any legally enforceable liability qua the respondent. The Branch Manager of the complainant bank has deposed that on 30.12.2008 a loan of Rs. 2,00,000/-, on 16.03.2009 a loan of Rs. 50,000/-, and on 02.06.2009 a loan of Rs. 50,000/- were taken by the father of the respondent. It is important to mention here that as per the execution of Special Power of Attorney (Ex. P9), the father had given authority to his son i.e., the respondent for availing the loan and repaying the same, which is not in dispute.

4. Crucially, no material has been brought on record to show that the respondent paid any instalment in order to repay the loan amount or that the accused had acknowledged the existence of the aforementioned legal liability. The period of limitation is calculated from the date of said acknowledgment or the latest payment made to discharge the legal liability. Given that's not the case, the period of limitation would be calculated from the dates the loan amounts were advanced. The cheque was dated 02.05.2012, which is after three years of the first two loans dated 30.12.2008 and 16.03.2009 being disbursed. Thus, the legal liability of the respondent stood terminated by then. Additionally, since the cheque was issued in order to discharge the liability qua three loans and the onus qua the first two loans had already extinguished, the liability

arising from the third loan granted to the respondent cannot be separated from the amount mentioned in the said cheque.

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.

(HARPREET SINGH BRAR)
JUDGE

February 20, 2024
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No