

cheque was returned unpaid with the remark, "Opening Balance Insufficient". Subsequently, a legal notice dated 02.02.2011 was served upon the respondent calling upon him to make the payment. Despite the legal notice, the respondent failed to pay the cheque amount within the stipulated period of 15 days. Hence, the complaint before the Magistrate.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the genesis of the dispute lies in one agreement to sell that was allegedly executed between the applicant and the respondent. But the agreement has never been produced on record by the applicant-complainant and no sufficient justification was provided for not doing so. Further, as per the records of the Trial Court, the applicant has not specified the date of the said agreement nor has he alleged that it is in possession of the respondent-accused. In these circumstances, the factum of transaction regarding the sale of property cannot be established.

4. Furthermore, HC Manjit Ram (DW-1) had produced on record certified copy of affidavit (EX. D2) given by the respondent, wherein it is mentioned that the respondent lost his blank signed cheques along with certain land documents on 22.12.2005, which were contained in a bag. On the basis of the original affidavit, one DDR was registered. However, the original affidavit and the DDR was destroyed under Rule 22.51 of the Punjab Police Rules, 1934, which states that the daily diaries of a Police Station can be destroyed 2 years after the date of last entry. Lastly, the applicant failed to prove the source from where he has arranged the said amount. The statement of the applicant that he has received the alleged amount from his father, who in turn received it from his father, cannot be considered to be reliable to prove the financial capacity of the complainant to advance the said sum as no evidence has been adduced in this regard.

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

14.03.2024
Ajay Goswami

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