

CRM-A-1929-MA-2017

219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1929-MA-2017
Date of decision: 08.01.2024

SURENDER SAINI

...APPLICANT/APPELLANT

V/S

VIJAY KUMAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sudesh Saini, Advocate and
Mr. Sandeep Punchhi, Advocate for the applicant/appellant.

HARPREET SINGH BRAR J. (ORAL)

1. This instant application under Section 378(4) Cr.P.C. is preferred against the order of acquittal dated 19.07.2017 passed by learned Judicial Magistrate Ist Class, Sirsa vide which, the present respondent has been acquitted in criminal complaint No.89-2 of 2015 dated 07.12.2015 filed under Section 138 of Negotiable Instruments Act, 1881 (herein after referred as NI Act).
2. The minimal facts as necessary for disposing this application are that respondent took a friendly loan of Rs.1,00,000/- from the applicant with a promise to repay the same. In discharge of his legal liability, respondent issued a cheque of Rs.1,00,000/- bearing No.002021 dated 18.08.2015 in favour of the applicant. On presentation of the said cheque to the bank, the same was returned with remarks 'Funds Insufficient' vide memo dated 05.11.2015. Thereupon, a demand notice dated 16.11.2015 was sent to the respondent but he did not make the necessary payment within the stipulated statutory period. Hence, the aforementioned complaint by the applicant.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clear that the applicant has been unable to prove the alleged advancement of loan to the respondent. He has not placed a single document on record before the learned trial Court proving the alleged transaction. Moreover, there was no transaction above the amount of Rs.3000/- in the bank account of the applicant for the concerned period. The applicant has also failed to prove his financial capacity to lend the said amount to the respondent as friendly loan. Further, it clearly shows from the cross-examination of CW5 Tarun Bansal that he had received two blank cheques of Rs.1,00,000/- each as security from the respondent in lieu of a sale agreement between them to which the present applicant was a witness. The cheque in question appears to have been misused to file the aforementioned complaint. Reliance has been placed upon the case titled **Krishna Janardhan Bhat vs. Dattatraya G. Hegde, 2008 (1) RCR (Civil) 498**, in appreciating a convincing rebuttal of the presumption under Section 139 of the N.I Act in the present case.

4. Consequently, the basic ingredient of Section 138 of N.I. Act, i.e., the cheque must be 'for discharge of some legally enforceable debt' remains unproved by the applicant. The above-mentioned order of acquittal passed by the learned trial Court stands validated.

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 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.

January 08, 2024
manisha/Ajay

(HARPREET SINGH BRAR)
JUDGE

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