

220 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRM-A-1454-MA-2015 (O & M)
Date of decision: 19.03.2024

M/S PUNJAB KASHMIR FINANCE LTD

...APPLICANT

V/S

AAZAD

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Kuldeep Kaur, Advocate
for the applicant.

HARPREET SINGH BRAR J. (ORAL)

The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 05.05.2014, passed by learned Sub Divisional Judicial Magistrate, Hathin in criminal complaint bearing no. 9/2 of 2010 dated 30.03.2009 filed under Sections 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act').

2. Briefly, the facts are that the respondent-accused took a loan of Rs. 4,50,000/- from the petitioner for purchase of a vehicle make Mahindra Maxx Pickup, bearing registration no.HR-27-J-1315 from the applicant-complainant in the month of July 2013 for running his business. The respondent had agreed to repay the loan with interest at the rate of 9% per annum. However, he defaulted in making the payment and to discharge his liability, the respondent issued a cheque bearing no.780824 dated 18.12.2009 for Rs.80,000/-. On presentation for encashment, the cheque was dishonoured vide memo dated 28.12.2008 with the remarks 'funds insufficient.' The respondent sought four days' time to ensure clearance of the disputed cheque.

However, it was dishonoured again vide memo dated 04.11.2014 with the

remarks 'funds insufficient.' Thereafter, a legal notice dated 19.01.2010 was sent to the respondent. However, the respondent failed to make the requisite payment and the present complaint was filed, in which, he was acquitted vide the impugned judgment.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that the disputed cheque was issued as a security. In his cross-examination, CW1-Ajeet Singh has stated that the applicant-company took blank cheques as security at the time of advancement of loans, which corroborates the defence taken by the respondent-accused. The respondent was to return the loan amount in 46 monthly installments, however, the record does not reflect as to installment for which month was sought to be paid by the disputed cheque. Moreover, the respondent-accused has placed on record the receipts indicating the payment of the installments as well as the award passed by the Arbitrator. Curiously, the factum of arbitration was not disclosed in the instant case by the petitioner-complainant. In view of the discussion above, this Court is of the considered opinion that the respondent has successfully rebutted the presumption under Section 139 NI Act.

4. 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.

5. 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.

March 19, 2024

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(HARPREET SINGH BRAR)
JUDGE

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