

HARPREET SINGH BRAR J. (ORAL)

This order of mine shall dispose of the above-mentioned applications filed under Section 378(4) Cr.P.C. as all of them arise out of the same factual background. For the sake of brevity, facts are taken from CRM-A-157-MA-2014.

2. The above-mentioned applications under Section 378(4) Cr.P.C. have been preferred against the common judgment of acquittal dated 13.09.2013 passed by learned Judicial Magistrate Ist Class, Karnal in the respective complaint cases registered under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act), all titled ‘Virender vs. Bhupinder Singh’ and arising out of the same transaction. The details are as follows:-

Sr.	Cheque details	Complaint	Application/Appeal
1.	No.195857 dated03.02.2010 forRs.7,58,000/- returned vide memo dated 16.02.2010	No.196 of 2010 Dated 17.04.2010	CRM-A-157-MA-2014
2.	No.195854 dated14.12.2009 forRs.10,00,000/- returned vide memo dated 16.02.2010	No.193 of 2010 Dated 12.04.2010	CRM-A-17-MA-2014
3.	No.195855 dated16.01.2010 forRs.10,00,000/- returned vide memo dated 16.02.2010	No.195 of 2010 Dated 17.04.2010	CRM-A-225-MA-2014
4.	No.195853 dated 28.11.2009 forRs.10,00,000/-	No.194 of 2010 Dated 12.04.2010	CRM-A-60-MA-2014

	returned vide memo dated 16.02.2010		
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2. Allegedly, the applicant-complainant is the sole proprietor of the firm namely ‘M/s Ram Dhari Virender’ and is a commission agent running a business involving sale and purchase of agricultural produce. At times, the respondent-accused borrowed money in advance from the applicant for his cultivation and domestic needs qua which the applicant maintained a regular account book in form of *Rokar Bahi*, duly signed by the respondent. The account was settled multiple times and every time, the outstanding amount was duly acknowledged by the respondent, by putting his signatures on the concerned receipt but he could not pay back the due amount because of financial problems. When the said account was finally settled on 28.11.2009, a sum of Rs.37,58,000/- was found to be due against the respondent. On the same day, a *panchayat* was convened regarding the same and it was settled that the respondent would pay the entire outstanding amount in four installments, i.e., 3 installments of Rs.10,00,000/- each and 1 installment of Rs.7,58,000/-. In order to discharge his aforesaid legal liability, the respondent issued 4 cheques as mentioned above. Upon presentation for encashment, all four cheques were dishonoured by the bank with remarks ‘Account Closed’.

3. After taking the requisite legal steps, the applicant-appellant filed four complaints and after his preliminary evidence, the learned trial Court summoned the respondent-accused to face trial. Upon appearance of the respondent, he was admitted to bail and thereafter, notice of accusation under Section 138 of NI Act was served upon him vide order dated 19.11.2011 to which he pleaded not guilty and claimed trial. Ultimately, the learned trial Court acquitted the respondent-accused and also exonerated him of the said

notice of accusation vide the impugned order dated 13.09.2013. Aggrieved by the same, the applicant has approached this Court by way of the above-mentioned applications/appeals.

4. Having heard the learned counsel for the parties and after perusing the material on record, this Court finds that the applicant-complainant was involved in money-lending business without possessing any valid license qua the same and the respondent used to borrow money from him. Thereby, the said loan advanced by the applicant to the respondent without possessing the necessary license as mandated by law, the claim of the applicant against the respondent is an unenforceable claim and thus, cannot be considered a legally enforceable liability under Section 138 of the NI Act. Further, adverse inference is drawn from the conduct of the applicant-complainant due to the fact that initially, he deposed falsely before the learned trial Court in order to conceal material facts but changed his stance when confronted by the learned defense counsel. A perusal of the material on record further shows that account book maintained by the applicant-complainant cannot be relied upon as the entries in *Rokar Bahi* (General Account/Day-book) do not match the ones in the Ledger Account maintained in the name of the respondent, thus, creating serious doubt qua the veracity of the same. Similarly, the vouchers are missing the signatures of the person who had issued the same, thereby, adding to the doubt in regard to the version alleged by the applicant. Furthermore, neither any written document qua the said settlement has been placed on record even though the amount involved is quite substantial nor any member from the *panchayat* convened on the day of the settlement, as alleged by the applicant, has been examined as a witness by him. All the facts put together are sufficient on the part of the respondent to raise a probable defence and to rebut the

presumptions under Section 118 & 139 of the NI Act. Hence, the observations recorded by the learned trial Court stand validated.

5. Pertinently, 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 applications and hence, the leave to appeal is denied.

February 26, 2024
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(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No