

226

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1669-MA-2015

Date of Decision: 31.01.2024

Surinder Singh

.....Applicant-Appellant

Versus

Smt. Uma Rani

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present: - Mr. Lalit Garg, Advocate
for the applicant-appellant

Mr. H.P.S. Ghumman, Advocate
for the respondent

Harpreet Singh Brar, J. (Oral)

1. The present application is preferred under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C') against the judgment of acquittal dated 04.08.2015 passed by learned Sub Divisional Judicial Magistrate, Dera Bassi in criminal complaint no. 119 of 30.08.2011 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

2. Briefly, the facts are that the respondent-accused had borrowed a sum of Rs. 10,00,000/- from the applicant-complainant on 21.01.2011. The respondent issued two cheques i.e. cheque no. 114910 dated 25.02.2011 for Rs. 5,00,000/- and cheque no. 114911 dated 20.02.2011 for Rs. 5,00,000/- in favour of the applicant. The applicant presented cheque no. 114910 dated 25.02.2011 for encashment on 25.02.2011 but the same was dishonoured for the reason of 'insufficient funds'. The cheque was presented again on 30.03.2011 but was

dishonoured again on the same ground. The respondent assured the applicant that the cheque will be honoured in May, 2011. Accordingly, the applicant presented it for encashment for the third time on 05.05.2011 but it was dishonoured yet again for the same reason vide memo dated 07.05.2011. The applicant demanded payment of Rs. 5,00,000/- from the respondent by means of a written legal notice in lieu of cheque no. 114910. The respondent failed to make the requisite payment within the stipulated 15 days and the present complaint was filed by the applicant, in which she was acquitted vide the impugned judgment dated 06.12.2019.

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 respondent has denied issuing the disputed cheques and her signatures on the. The Deputy Manager of the Dera Bassi branch of Axis Bank appeared in the witness box as DW1 and deposed that the signatures on cheque No. 114910 dated 25.02.2011 do not match the specimen signatures of the respondent. In fact, cheque no. 114911 dated 20.02.2011 was dishonoured on the grounds 'Drawer's signature differ' and a complaint dated 30.08.2011 was filed in furtherance of the same.

4. Furthermore, the legal notice was issued to the respondent for payment of Rs. 5,00,000/- as against cheque no. 114910 dated 25.02.2011 while the concluding paragraph of the notice mentions cheque no. 114911. No fresh notice was sent under Section 138 of the NI Act to rectify the same. Therefore, the applicant has failed comply with the mandatory requirement of Section 138 of the NI Act of issuing a proper legal notice to the respondent-accused. However, in spite of this error, the attending circumstances that tilts the preponderance of probabilities in favour of the respondent. The burden of proof

on the accused is not as heavy as the prosecution, she is not required to disprove the entire prosecution case. Keeping this in mind, the respondent has been successful in rebutting the presumption under Section 139 of the NI Act.

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.

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.

(HARPREET SINGH BRAR)
JUDGE

January 31, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No