

CRM-A-757-MA-2018(O&M)

2024:PHHC:009351

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

225

CRM-A-757-MA-2018(O&M)

Date of Decision:23.01.2024

MUSHTAQ ALI

...Applicant/Appellant

Versus

RAJMAN ALI

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunny K. Singla, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J. (ORAL)

1. This instant application under Section 378(4) CrPC is preferred against the judgement dated 16.01.2018 passed by learned Judicial Magistrate Ist Class, Malerkotla vide which the complaint No. 22 of 22.02.2013 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) was dismissed and the present respondent was acquitted.

2. The facts, in brief, are that the respondent borrowed a sum of Rs.4,00,000/- from the applicant and in order to discharge his legal liability, he issued a cheque bearing no.052155 dated 05.11.2012 of Rs.4,00,000/- in favour of the applicant drawn on State Bank of Patiala, Ahmedgarh. However, when the said cheque was presented for encashment, it was returned with remarks 'Funds Insufficient' vide memo dated 19.12.2012. A demand notice dated 04.01.2013 was sent by the applicant calling upon the respondent to make the payment, but the respondent failed to pay the cheque amount. Aggrieved by the same, the applicant preferred the above-mentioned complaint before the

learned trial Court against the respondent.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is manifestly clear that the applicant had stood as a guarantor for the respondent qua his loan of Rs.1,00,000/- from one Jodha Kumar, which ultimately the applicant had to repay on the behalf of the respondent. This made him aware of the poor financial condition of the respondent and it is highly improbable that despite knowing the said poor condition of the respondent, the applicant would still advance a loan of Rs.4,00,000/- to the respondent. Furthermore, the applicant had himself suffered a statement before the police that the cheque in question was issued by the respondent as a share of his investment in the joint venture with the applicant to set up a Nickel Factory. The conjoined reading of the statements suffered by the applicant makes it clear that no cash loan of Rs.4,00,000/- was ever given to the respondent by the applicant. Thereby, the stand taken by the learned trial Court that the presumption as provided under Section 139 of the NI Act was successfully rebutted by the respondent stands validated.

4. Furthermore, 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.

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.

January 23, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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