

224 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRM-A-2689-MA-2017
Date of decision: 09.01.2024

OM PARKASH

...APPLICANT/APPELLANT

V/S

DAVINDER SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navjot Singh, 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 11.10.2017 passed by learned Additional Chief Judicial Magistrate, Shri Muktsar Sahib, vide which, the present respondent has been acquitted in criminal complaint No.111 dated 25.10.2016 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 the applicant and the respondent belong to the same village and were on friendly terms. The applicant is sole proprietor of M/s Paruthi Traders which is a 'Commission Agency'. On 15.03.2015, the respondent approached the applicant with a request for a friendly loan of Rs.6,00,000/- for his urgent domestic needs. The applicant agreed and on 25.03.2015, issued a cheque of Rs.6,00,000/- bearing No.610122 drawn from his bank account at Oriental Bank of Commerce (OBC) in favour of the respondent. The respondent assured the applicant to repay the same as and when demanded by him. In consequence, the respondent issued a cheque of Rs.6,00,000/- bearing No.873708 drawn from his bank account at Oriental Bank of Commerce

(OBC) in favour of the applicant in order to discharge his legal liability. When the applicant presented the said cheque for encashment, the same was dishonoured with remarks 'insufficient funds' vide memo dated 03.09.2016. In response, a demand notice was served upon the respondent through registered post on 15.09.2016, but neither reply was given nor any payment was made by him. Aggrieved, the applicant filed the above-mentioned complaint.

3. Learned counsel for the applicant places reliance upon the case titled as *Manoj Karwasara vs. Parhlad Soni* bearing No. *CRM-A-599-MA of 2014*, decided on 17.02.2020, by a Co-ordinate Bench of this Court. In the aforementioned case, it was held that the order of trial Court, dismissing the complaint under Section 138 NI of Act, on the basis that the complainant was a professional money lender and lending money without licence, was erroneous and not sustainable. However, having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clear that the applicant has miserably failed to prove whether the said cheque issued in his favour by the respondent, was in discharge of any legal liability, including a friendly loan. The alleged friendly loan advanced to the respondent was done from account of the firm namely, M/s Paruthi Traders, of the applicant and not from his personal bank account. But interestingly, books of account or Income Tax returns of his firm have not been produced before the trial Court by the applicant-complainant, thereby withholding the best evidence. Had the applicant produced the said documents, the fact concerning legally enforceable debt could have been easily ascertained. Even the firm has not been made a party in the above-mentioned complaint.

4. In conclusion, 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 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 case titled as *State of Haryana Vs. Ankit and others* bearing *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 09, 2024
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(HARPREET SINGH BRAR)
JUDGE

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