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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-2080-MA-2015(O&M)
Date of Decision: 06.03.2024

Baljit Singh

...Applicant-Appellant

Versus

Rajinder Singh

...Respondent

CRM-A-65-MA-2016 (O&M)
Date of Decision: 06.03.2024

Baljit Singh

...Applicant-Appellant

Versus

Rajinder Singh

...Respondent

CRM-A-83-MA-2016 (O&M)
Date of Decision: 06.03.2024

Baljit Singh

...Applicant-Appellant

Versus

Rajinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Sangwan, Advocate
for the applicant-appellant

Harpreet Singh Brar, J. (Oral)

CRM-42362-2015 in CRM-A-2080-MA-2015

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 31 days in filing the instant application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay of 20 days in filing the said application is condoned.

CRM-A-2080-MA-2015, CRM-A-65-MA-2016 and CRM-A-83-MA-2016

1. This order shall dispose of all three of the above-mentioned petitions as they arise from similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-A-2080-MA-2015.
2. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 16.09.2015 passed by learned Judicial Magistrate Ist Class, Bhiwani in criminal complaint No. 80-2 dated 18.10.2011 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter ‘NI Act’).
3. Briefly, the facts are that the respondent-accused borrowed a sum of Rs. 33,00,000/- from the applicant-complainant for purchase of some agricultural land in Ganganagar with a promise to repay the same as and when demanded by the petitioner. On asking of the petitioner, in order to discharge his liability, the respondent issued three cheques in favour of the complainant as detailed below, which was dishonoured on their presentation for encashment:

Sr. No.	Cheque no.	Dated	Amount	Dishonoured vide memo dated	Remarks
1.	022816	20.06.2011	Rs.10,00,000/-	26.09.2011	Insufficient funds
2.	0022817	20.09.2011	Rs.12,00,000/-	22.09.2011	Insufficient funds
3.	0022818	20.09.2011	Rs.11,00,000/-	22.09.2011	Insufficient funds

Thereafter, a legal notice dated 29.09.2011 to call upon him to make the payment was served on 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 dated 16.09.2015.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that after

receiving the legal notice, the respondent-accused realised that the disputed cheques were missing from his chequebook. On receiving the instant compliant, the learned trial Court ordered for an enquiry under Section 202 Cr.P.C., which was conducted by ASI Om Parkash, In-charge, Police Post Mundhai. The report submitted by SHO Police Station Sadar Bhiwani concluded the allegation of theft and forgery to be true. Moreover, DW3- V.B. Kashyap, Handwriting and Fingerprint Expert has categorically stated that the signature on the disputed cheques and the admitted signatures, ascertained from the signature of the respondent on his application of surrender and bail as well as his statement in Court dated 21.02.2015, have not been written by the same person. The respondent has consistently denied his signature in his reply to the legal notice as well as his statement recorded under Section 313 Cr.P.C. In fact, one of the disputed cheques bearing no. 002817 dated 20.09.2011 was also dishonoured on the grounds of difference in signature.

4. Further, the applicant-complainant served in the Indian Army and based on his salary, he could not have gathered the alleged loan amount in 15 years. In his cross-examination, CW2-complainant has stated that he had borrowed the said amount from his maternal uncle namely Chand Ram. However, this factum does not find mention in the complaint or the affidavit tendered by him. As a matter of fact, Chand Ram has not been examined by the petitioner-complainant to prove his financial capacity. As such, the complainant respondent has failed to prove the alleged legally recoverable debt and his financial capacity to advance the same. Therefore, the respondent-accused 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.

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.

7. Accordingly, the leave to appeal in all the above-mentioned application is denied. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

06.03.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No