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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-392-MA-2015
Reserved on: 11.03.2024
Pronounced on: 13.03.2024

Rajpal Singh

...Applicant/Appellant

Versus

Mahender Pal Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Ms. Shweta Beniwal, Advocate for
Mr. Aman Pal, Advocate
for the applicant/appellant

Harpreet Singh Brar, J. (Oral)

CRM-7531-2015

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 20 days in filing the instant application under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.')

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

CRM-A-392-MA-2015

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment dated 08.12.2014 passed by learned Judicial Magistrate, Gurgaon, whereby, respondent-accused has been acquitted in criminal complaint no.2883 dated 27.02.2013, filed under Sections 138 of Negotiable Instruments Act, 1881 (hereinafter 'NI Act') read with Section 420 of IPC.

2. Briefly, the facts are that an agreement to sell was executed between the applicant-complainant and the respondent-accused on 27.04.2012, for sale of Flat No. C-2/701, 7th Floor, Block C-2, Green Homes, CGHS Plot No. 4, Sector 52, Gurgaon, measuring 2250 square feet. The applicant paid Rs.50,00,000/- to the respondent, but later, found out that the latter is not the owner in possession of the said property. Thereafter, the applicant contacted the respondent, who promised to deliver the flat or return double the money. Since the respondent could not deliver the flat to the applicant, he issued him a cheque bearing no.449860 dated 16.10.2012 for an amount of Rs. 16,00,000/-, in favour of the applicant. On presentation for encashment, the disputed cheque was dishonoured vide memo dated 14.01.2013, with remarks 'funds insufficient'. Thereafter, a legal notice was served upon the respondent on 04.02.2013, to call upon him to make the payment. Since, the respondent failed to make the requisite payment in the stipulated time period, the instant complaint was filed.

3. On finding a prima facie case, notice of accusation was served upon the accused vide order dated 09.10.2013, to which, he pleaded not guilty and claimed trial. The complainant examined 04 witnesses to prove its case. Statement of the accused under Section 313 Cr.P.C. was recorded, wherein, he alleged false implication and claimed innocence. However, he examined 05 witnesses in his defence. After assessing all material available on record, the learned trial Court acquitted the respondent-accused, vide judgment dated 08.12.2014.

4. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that the respondent-accused has put up a probable defence, in his statement under

Section 313 Cr.P.C. and stated that the said flat was owned and possessed by one Sanjay Goyal. The respondent entered into an agreement dated 06.05.2012 with him, to get the flat transferred in his name or in the name of any other person. He also paid Rs.15,00,000/- to Sanjay Goyal, at the time of entering into the said agreement. Since, the respondent had the authority to sell the flat ahead, he entered into an agreement to sell with the complainant and one Satish, who jointly paid Rs. 50,00,000/- to him. The applicant and Satish could not fulfil the terms of agreement on their part, in spite of pushing the date of execution of the sale deed twice or thrice. Admittedly, the complainant and Satish took possession of the said flat, without paying the balance consideration amount. It was mutually agreed that the respondent will return an amount of Rs.57,00,000/- to them, which was reduced into writing on 27.08.2012 (Ex. DG). Thereafter, with mutual agreement, the flat was to be sold to one Ashish for Rs.1,10,00,000/-. The respondent transferred Rs.50,00,000/- by way of cash, cheque and RTGS to the applicant and Satish. With respect to the remaining Rs.7,00,000/-, out of which Rs.2,00,000/- was payable to Satish and Rs.5,00,000/- to the applicant, two security cheques were issued by the respondent. Consequently, the applicant and Satish gave up possession of the flat and the same was delivered to Ashish. The applicant misused the security cheque and filled an amount of Rs.16,00,000/- in the cheque, which was never owed to him by the respondent.

5. A perusal of the record indicates that in his testimony, DW1-Kanwaljit, Ahlmad, JMIC, Gurgaon, has deposed that the respondent made three payments with respect to the complaint filed by Satish, thereafter the same was dismissed in default for want of prosecution. The agreement to sell and the settlement has been corroborated by the testimony of DW3-Umed

Singh, who was an eye-witness to the said transactions. He has specifically stated that while the complainant and Satish paid Rs.50,00,000/- to the respondent, they could not arrange the balance consideration of Rs.60,00,000/- causing the deal to be cancelled on 27.08.2012, on the request of the buyer. He also corroborates the mutual agreement to settle at Rs.57,00,000/-.

6. Furthermore, neither the instant compliant nor the complaint filed by Satish mentions their shares and the quantum of investment. In his cross-examination, when a specific query was put to the applicant-complainant (CW1), he could not specify the share of each partner. However, Satish-CW4, in his cross-examination, has stated that his share was to the extent of 75% while that of the applicant was 25%. Based on this admission, the applicant's share is limited to Rs.12, 50,000/-, as such, no question arises for issuance of cheque for an amount of Rs.16,00,000/-. The agreement (Ex. C1) is also silent on the aspect of paying double the amount if the sale falls through. As such, the genesis of liability of the respondent to the extent of Rs.16,00,000/- remains unproved and, therefore, the respondent has been successful in rebutting the presumption under Section 139 of the NI Act by putting up a probable defence in terms of the judgment rendered by the Hon'ble Supreme Court in **M.S. Narayana Menon alias Mani v. State of Kerala and Another 2006(6) SCC 39.**

7. 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.

8. 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.

March 13, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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