215-2 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-544-MA-2017 (O&M)
Date of decision: 07.03.2024

Chandan Bansal ...Applicant/Appellant

Versus

Arvind Pandey ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navneet Jindal, Advocate
for the applicant-appellant

Ms. Tarrannum Madan, Advocate for
Mr. C.K. Singla, Advocate for the respondent.

HARPREET SINGH BRAR, J.

CRM-8513-2017

This is an application under Section 5 of Limitation Act, 1961 seeking condonation of delay of 813 days in filing the accompanying application under Section 378(4) Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay of 813 days in filing the said application is condoned.

CRM-A-544-MA-2017

1. This instant application under Section 378(4) CrPC is preferred against the judgment dated 16.09.2014 passed by learned Judicial Magistrate Ist Class, Chandigarh in Complaint case No. 12476 of 11.08.2011 vide which the respondent-accused has been acquitted in the aforesaid complaint filed by the applicant-appellant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act).

Neha
2024.04.04 18:34
I attest to the accuracy and
integrity of this document

2. The minimal facts as necessary for disposing this application are that, allegedly, the applicant-complainant had advanced a friendly loan of Rs.2,00,000/- by way of four transactions of Rs.50,000/- each in the year 2009. The respondent-accused issued a post-dated cheque bearing No.537948 dated 01.03.2010 for a sum of Rs.2,00,000/- drawn on UCO Bank, Sector 17-B, Chandigarh, in favour of the applicant, towards the total repayment of the said loan amount. The respondent, further revalidated the cheque by altering the date on the cheque in question to 01.03.2011, under his signature. When the applicant presented the said cheque for encashment, it was dishonoured and returned unpaid by the bank of the respondent vide memo dated 08.06.2011 with remarks 'Funds Insufficient'. Thereafter, the applicant served a legal notice dated 05.07.2011 upon the respondent demanding the payment of the said cheque amount but the respondent-accused failed to make the necessary payment within the statutory period. Aggrieved, the applicant preferred the complaint (supra) which was dismissed by the learned trial Court and thus, the applicant has approached this Court by way of the present appeal.

3. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it is manifestly clear that the applicant-complainant has miserably failed to prove on record the very basic and necessary ingredient to constitute an offence under Section 138 NI Act, i.e., the cheque in question was drawn by the respondent 'for discharge of a legally enforceable debt'. The applicant alleged in his complaint that the cheque in question was issued by the respondent to discharge a legal debt upon numerous requests for repayment but failed to utilize the said cheque for almost fifteen months. Moreover, the cheque in question bears the words 'Security Cheque' on its back, as admitted by the applicant in his cross-examination but the applicant-

Neha
2024.04.04 18:34
I attest to the accuracy and
integrity of this document

complainant failed to mention the aforesaid fact in his complaint and thus, did not approach the learned trial Court with clean hands. Interestingly, the applicant in his cross-examination admitted that he was unable to bring on record any document to establish the alleged transaction or to prove the fact that he had the financial capacity to advance the alleged loan. Further, it is clear that applicant had professional relationship with the respondent but somehow advanced a loan of Rs.2,00,000/- in cash without taking any documentation or a receipt and without discussing the terms of interest. Such an action is quite contrary to that of a reasonable man leading to an adverse inference being drawn against the version of the applicant. Further perusal of the material on record reveals that the applicant has failed to adduce any evidence to establish the actual loan liability of the respondent and therefore, the presumption under Section 139 of NI Act stands rebutted in favour of the respondent-accused.

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

Neha
2024.04.04 18:34
I attest to the accuracy and
integrity of this document

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

07.03.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

Neha
2024.04.04 18:34
I attest to the accuracy and
integrity of this document