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

224 **CRM-A-696-MA-2017 (O & M)
Date of Decision: 14.03.2024**

SUPREME MOBILES LIMITED

...APPLICANT

V/S

MUNNA SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

***

Present: - Mr. Vaibhav Jain, Advocate
for the applicant/appellant.

***

Harpreet Singh Brar, J. (Oral)

CRM-12077-2017

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 190 days in filing the accompanying 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 190 days in filing the said application is condoned.

CRM-A-696-MA-2017

The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 11.07.2016 passed by learned Judicial Magistrate 1st Class, Hisar, in a criminal complaint case, bearing no. 1418-II of 2014, filed under section 138 of The Negotiable Instruments Act, 1881 (hereinafter 'NI Act' for brevity).

2. Briefly, the facts are that the applicant-complainant is a limited company under the Companies Act and the respondent-accused is an employee

of the said company. As per the complaint, the respondent being an employee of the applicant-company used to receive an advance amount from time to time from the applicant company. After settlement of account, a sum of Rs. 1,56,895/- was outstanding against the respondent. Upon demand by the applicant company of the outstanding amount from the respondent, the latter, in discharge of his legally enforceable debt, issued a cheque, bearing no. 424751 dated 04.11.2014, for an amount of Rs. 1,56,895/-, drawn on Canara Bank, Branch Hisar, in favour of the applicant. Thereafter, the applicant deposited the above said cheque with his bank, Union Bank of India, Branch Red Square Market, Hisar for encashment of the same. However, vide memo dated 05.11.2014, the above said cheque was returned unpaid with the remark, "insufficient funds". Subsequently, a legal notice dated 07.11.2013 was served upon the respondent to call upon him to make the payment. Despite the legal notice, the respondent failed to pay the cheque amount within the stipulated period of 15 days. Hence, the complaint before the Magistrate.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, the contention of the applicant-company that the respondent used to take advance amount time and again cannot be accepted on the grounds that as per the Memorandum and Article of Association of the applicant-company, it has been nowhere mentioned that the applicant-company is competent to hand out loans or advance amounts to any person, whether an employee or not. If the version of the applicant-company is true, even then, the respondent is under no legally enforceable debt as the complainant-company has been advancing loans illegally. It is imperative to possess a money lending licence as per the Money Lender's Act. Section 3 of the said Act provides that the suit or application for

recovery of the loan shall be dismissed if the person claiming recovery does not hold a valid licence under the Act. Thus, the debt becomes an unenforceable debt.

4. Furthermore, the applicant-company has placed on record the ledger books and accounts to prove that an amount of Rs. 1,56,895/- is outstanding against the accused. However, the applicant-company has neither examined the accountant of the company nor any other person who has prepared the concerned statement of accounts. Therefore, the veracity and authenticity of these ledger books cannot be conclusively established. This finding is further substantiated by the fact that the applicant has placed certain vouchers (Ex. C8 to C19) on record, but the same vouchers find no mention in the statement of account. This shows that the statement of account has been prepared as per the applicant's convenience and cannot be relied upon.

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. As such, there is no merit in the present application and hence, the leave to appeal is denied.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

March 14, 2024
manisha

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