

TARSEM LAL

V/S

GURNAM SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: None for the applicant.

Mr. Ankur Lal, Advocate for respondent.

HARPREET SINGH BRAR J. (ORAL)

The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 21.02.2015 passed by learned Judicial Magistrate 1st Class, Guhla, District Kaithal, in a criminal complaint case, bearing no. RBT-111 of 2013, filed under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter 'NI Act' for brevity).

2. Briefly, the facts are that the applicant extended a loan of Rs. 10,00,000/- to the respondent. The loan was disbursed on 10.01.2013. On the same day, in order to discharge his legally enforceable debt, the respondent issued a post-dated cheque, bearing no. 007044 dated 04.06.2013 amounting to Rs. 10,00,000/-, drawn on ICICI Bank, Branch Cheeka, in favour of the applicant. Thereafter, on 10.06.2013, the applicant deposited the above said cheque with his bank, Kotak Mahindra Bank, Branch Cheeka, for encashment of the same. However, vide memo dated 10.06.2013, the above said cheque was returned unpaid with the remark, "payment stopped by drawer". Subsequently, a legal notice dated 21.06.2013 was served upon the respondent to call upon him to make the payment. The said notice was duly replied by the

respondent through his advocate, vide reply dated 04.07.2013. Despite the legal notice, the respondent failed to pay the cheque amount. Hence, the complaint before the Magistrate.

3. Having heard the learned counsel for the respondent and after perusing the record of the case with his able assistance, it transpires that no material has been brought on record to prove that a transaction of Rs. 10,00,000/- took place between the applicant and the respondent. The applicant did not produce any document on record to show the availability of Rs.10,00,000/- with him. No specific rate of interest or for what purpose has the loan amount been advanced by the applicant, has been stated. Since no material was brought forward by the applicant to prove the factum of legally enforceable debt, which is one of the essential ingredients of Section 138 of the NI Act, the respondent was rightly acquitted.

4. Furthermore, the name of the applicant and amount mentioned on the cheque bore a different ink from the ink used to sign the cheque. This fact coupled with the version of the defence that the respondent had immediately filed a complaint against the applicant and his brother in Police Station Cheeka, makes the prosecution case doubtful. As a result, the prosecution failed to prove the guilt of the respondent beyond the shadow of reasonable doubt.

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.

February 28, 2024
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(HARPREET SINGH BRAR)
JUDGE

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