# IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

**237** **CRM-A-105-2022**
**Date of Decision: 01.02.2024**

**YOGRAJ SHARMA**
**…..APPELLANT**

**VERSUS**

**BALRAM**
**…...RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Rahul Arora, Advocate
for the applicant/appellant.

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**SANDEEP MOUDGIL, J**

**CRM-11785-2022**

Prayer in this application is under section 5 of Limitation Act read with section 482 Cr.P.C. for condonation of delay of 262 days in filing the appeal.

In view of the averments made in this application which is supported by an affidavit, the delay of 262 days in filing the present appeal is condoned.

Accordingly, the application is allowed.

**CRM-A-105-2022**

1. The application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 14.03.2019 passed by JMIC, Ferozepur(in short, 'trial court') vide which respondent has been acquitted under section 138 of Negotiable Instruments Act 1881, (in short, 'the NI Act'), on the ground that the appellant has miserably failed to prove his case beyond reasonable doubt.

2. Briefly put forth, the facts of the case are that the respondent-accused borrowed a sum of Rs. 3,60,000/- from the appellant for domestic needs and promised to return the same alongwith interest within short period. In lieu of discharge of his legal liabilities towards the appellant, respondent-accused issued a cheque bearing no. 502980 dated 16.07.2014 for Rs. 3,60,000/- drawn at Union Bank Of India, Ferozpur branch which was presented by the appellant in Oriental Bank of Commerce, Ferozepur Cantt Branch on 17.07.2014 which got dishonured with remarks "Fund Insufficient", Thereafter, the appellant sent a legal notice to the accused-respondent on 19.07.2014 through registered post who even then did not pay back the amount involved in the cheque which compelled her to file a complaint under section 138 of NI Act which was dismissed vide judgment dated 14.03.2019. Hence, the present appeal.

3. Counsel for the appellant contends that the trial court failed to appreciate the fact that during the trial, the appellant was categoric in submitting that he had advanced a loan of Rs. 3,60,000/- to the respondent-accused wherein it has come on record that the appellant was having the money with him to the tune of Rs. 4/4.50 Lakhs after selling his vehicle in the month of January 2014 and out of that money he had advanced loan to the respondent-accused

4. He further contends that the trial court has wrongly concluded the presumption attached to the cheque in question since nothing has come on record in writing as to what was the dealing about whereas the respondent-accused have himself not sticked to one particular defence and has rather came up with different versions.

5. He vehemently argues that the trial court has misconceived the law by observing that since the ink used for filling the body of the cheque is different from ink used to sign the same, while relying upon section 20 of the N.I.Act.

6. He further argues that it is proven case that the cheque in question bears the signature of the respondent-accused Balram and as such the presumptions exists in favor of appellant.

7. Having heard learned counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

8. It is evident from the record in hand, that accused-respondent is signatory of the cheque in question but on the other hand it is a settled principle of law that the accused-respondent can displace the presumption in favour of the holder on the scale of preponderance of probabilities and the lack of consideration or a legally enforceable debt, need not to be proved to the hilt.

9. Therefore, in my opinion, from the perusal of the file it is clearly evident that it is a proven record that there existed certain dealing between father of the appellant Prem Chand, appellant and the respondent-accused which was compromised vide Ex.C6. It is further corroborated from Ex.C11 which is an application moved by the respondent-accused against Prem Chand(father of the appellant) to the effect that respondent-accused had obtained Rs. 30,000/- as loan from the father of the appellant and he was having certain blank signed documents belonging to the respondent-accused.

10. Further, the appellant has not placed on record any document which could show that amount of Rs. 3,60,000/- was ever advanced by the

appellant to the respondent-accused.

11. Moreover, it is well settled proposition of law that the complainant-appellant has to stand on own legs to prove its case beyond shadow of reasonable doubt by proving the essential ingredients of section 138 of the NI Act. However in the instant case, respondent-accused has been able to rebut the presumption attached to the cheque beyond preponderance of probabilities where dealing qua the cheque as has been alleged to be issued itself comes under doubt wherein ink used for filling the body of the cheque is different from the ink used to sign the same. By no stretch of imagination it can be believed that one person would fill the cheque in one ink and sign the same in another ink.

12. In the light of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court dated 14.03.2019 and as such, having no merit, the appeal stands dismissed.

01.02.2024 (**SANDEEP MOUDGIL)**
**anuradha/Poonam Negi** **JUDGE**

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