

CRM-A-1473-2019
Date of decision: 10.01.2024

...APPLICANT/APPELLANT

V/S

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Chandan Singh Rana, Advocate
for the applicant/appellant.

HARPREET SINGH BRAR J. (ORAL)

CRM-22762-2019

This is an application filed under Section 5 of Limitation Act, 1961 seeking condonation of delay of 20 days in filing the accompanying application u/S 378(4) Cr.P.C.

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

CRM-A-1473-2019

This instant application under Section 378(4) Cr.P.C. is preferred against the judgment of acquittal dated 19.04.2019 passed by learned Judicial Magistrate Ist Class, Ludhiana vide which, the present respondent has been acquitted in criminal complaint bearing No.COMA/1635/14.03.2015 filed under Section 138 of Negotiable Instruments Act, 1881(herein after referred as NI Act) read with Section 420 of Indian Penal Code, 1860.

2. The minimal facts as necessary for disposing this application are that the applicant and respondent jointly opened a partnership firm in the name and style of 'M/s Ludhiana Kolkata Transport Company' vide partnership deed

dated 01.03.2014. Later on, due to some unavoidable circumstances, the said firm was dissolved orally with their mutual consent and as per the written compromise dated 15.08.2014, an amount of Rs.5,85,000/- stood due against the respondent in favour of the applicant. In order to discharge his legal liability, respondent issued three cheques bearing Nos.601222 of Rs. 2,00,000/- dated 15.09.2014, 601223 of Rs.2,00,000/- dated 15.10.14, and 601224 of Rs.1,85,000/- dated 15.11.2014 in favour of another firm of the applicant. Regarding the cheques bearing Nos.601222 & 601223, two new cheques of Rs.2,00,000/- each bearing No.058472 & 014703, respectively, were issued by the respondent in lieu of the earlier aforesaid cheques. All the aforementioned cheques were issued by the respondent, with the assurance that the said cheques shall be encashed upon presentation before the bank. But when the applicant separately presented cheques bearing Nos. 014703 & 601224, both of them were dishonoured with remarks 'Insufficient Funds' vide separate return memos. Thereupon, the applicant issued a demand notice qua cheque No.014703, but the respondent did not make any payment regarding the cheque amount. Hence, the complaint.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clear that the applicant has miserably failed to prove the necessary ingredient under Section 138 of NI Act, i.e., if the cheque in question was issued in discharge of a legally enforceable debt by the respondent. Furthermore, despite the fact that respondent has not denied his signatures on the cheque in question, the applicant has been unable to prove due execution of the same.

4. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the NI Act. It merely raises a presumption in

favour of the holder of cheque that the same has been issued for discharge of debt or other liability. Mere presentation of cheque issued by the accused would not amount to acceptance of any debt or liability. The complainant has to show that the cheque was issued for an existing debt or liability.

5. Further, the liability qua both the new cheques (Nos.058472 & 014703) was settled through two separate RTGS bank transactions. Cheque No.058472 was returned to the respondent in consequence of the aforesaid RTGS settlement, but this fact was withheld by the applicant while filing the above-mentioned complaint. Even the fact that RTGS settlement of the cheque amount had already been made by the respondent regarding cheque No.014703 was also concealed by the applicant and only disclosed during his cross-examination.

6. 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* bearing *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.

7. 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.

January 10, 2024
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(HARPREET SINGH BRAR)
JUDGE

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