

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1300-2023

Date of Decision: 04.01.2024

THE SUNAM PRIMARY COOPERATIVE AGRICULTURE
DEVELOPMENT BANK LIMITED, SUNAM

...Applicant-Appellant

Versus

SHINGARA SINGH

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mukul Aggarwal, Advocate
for the applicant-appellant

HARPREET SINGH BRAR, J. (ORAL)

CRM-39493-2023

Allowed as prayed for subject to all just exceptions.

CRM-39497-2023

This is an application seeking condonation of delay of 34 days in
filing the accompanying petition u/S 378(4) Cr.P.C.

For the reasons mentioned in the application, the same is
allowed.

CRM-A-1300-2023

1. This instant application under Section 378(4) CrPC is preferred against the order of acquittal dated 22.05.2023 passed by learned Judicial Magistrate Ist Class, Sunam vide which the present respondent has been acquitted in criminal complaint No. 172 dated 19.01.2018 filed under Section 138 of Negotiable Instruments Act, 1881 (herein after referred as NI Act).
2. The minimal facts as necessary for disposing of this application are that in the present case, respondent raised a house loan of Rs.3,00,000/- from the applicant bank on 21.02.2014 and executed the necessary documents

in this regard. But the respondent failed to repay the loan amount with interest as per the terms of the said loan and committed default. Thereupon, respondent issued a cheque No. 050296 dated 15.11.2017 of Rs.1,72,000/- drawn on HDFC Bank, Sunam in favour of the applicant as part payment of the due amount outstanding towards his loan account. The said cheque got dishonoured vide memo dated 17.11.2017 with remarks 'Alterations require drawer's authentication', however, the petitioner was assured at the time of issuance of the said cheque that alteration in the cheque had been duly authenticated by the respondent and the same would be encashed on its presentation. Therefore, a demand notice dated 12.12.2017 was issued to respondent which went unanswered.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clear that the debt against the respondent had become legally irrecoverable and unenforceable at the time of issuance of the cheque in dispute because the loan was advanced on 21.02.2014 and no acknowledgment of the debt was obtained till 21.02.2017. It was incumbent upon the petitioner bank to obtain an acknowledgement of the debt within the aforesaid period in order to revive the limitation period of 3 years but it failed to do so. Therefore, the learned trial Court has correctly acquitted the respondent as no presumption under Section 139 of the NI Act can be attracted since the petitioner has failed to prove any legally enforceable debt or liability against him.

4. 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 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

04.01.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No