

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1306-2023
Date of Decision: 04.01.2024

DALER SINGH

...Applicant-Appellant

Versus

SATBIR SINGH

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kamal Kant, Advocate
for the applicant-appellant

HARPREET SINGH BRAR, J. (ORAL)

CRM-39603-2023

This is an application seeking condonation of delay of 65 days in
filing the accompanying petition under Section 378(4) of Cr.P.C.

For the reasons mentioned in the application, the same is allowed
and the delay of 65 days in filing the accompanying application is condoned.

CRM-A-1306-2023

1. This instant application under Section 378(4) CrPC is preferred
against the order of acquittal dated 10.05.2023 passed by learned Judicial
Magistrate Ist Class, Karnal vide which the present respondent has been
acquitted in criminal complaint No. NI/1516/2019 dated 20.04.2019 filed under
Section 138 of Negotiable Instruments Act, 1881 (herein after referred as NI
Act).

2. The minimal facts as necessary for disposing this application are
that in the present case, respondent cheated the petitioner by giving him false
assurance for sending his son abroad and received Rs.16,00,000/- in this regard

but he failed to arrange visa for Canada for his son. On 03.11.2018, the

petitioner convened a panchayat in which respondent agreed to repay the aforementioned amount. Thereupon, in order to discharge his legal liability, respondent issued cheque No. 004977 dated 04.01.2019 for Rs.14,00,000/- in favour of the petitioner with an assurance that the same would be encashed on its presentation but it got dishonoured vide memo dated 28.02.2019 with remarks 'Funds Insufficient'. Thereafter, the petitioner issued a demand notice dated 25.03.2019 but respondent failed to make the necessary payment.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clear that as per the written compromise between the petitioner and respondent, an amount of Rs.11,25,000/- was settled to be paid to the petitioner which was paid via cheque No. 33001 & 33002 dated 30.07.2019 and 26.06.2019, respectively. On further perusal of the evidence on record, it becomes apparent that the cheque of Rs.14,00,000/- was to be returned to respondent on complete payment of the aforementioned settled amount of Rs.11,25,000/- and the petitioner himself admitted before the learned Trial Court to have received the said settled amount. Further, the petitioner has not been able to prove any other legally enforceable liability against the respondent apart from the aforementioned amount of Rs.16,00,000/- (settled to Rs.11,25,000/- and paid), in lieu of which the cheque of Rs.14,00,000/- could have been issued. Therefore, the learned trial Court has correctly acquitted the respondent as the petitioner has not been able to prove that the said cheque of Rs.14,00,000/- was issued in discharge of any existing legal debt or liability.

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

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