

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CRM-A-900-2022(O&M)
Date of Decision: 23.01.2024

M/S RAM JI STEELS

...Applicant-Appellant

Versus

SIMARPAL SINGH AND ANOTHER

.....Respondents
2.

CRM-A-918-2022(O&M)
Date of Decision: 23.01.2024

M/S RAM JI STEELS

...Applicant-Appellant

Versus

SIMARPAL SINGH AND ANOTHER

.....Respondents
3.

CRM-A-953-2022(O&M)
Date of Decision: 23.01.2024

M/S RAM JI STEELS

...Applicant-Appellant

Versus

SIMARPAL SINGH AND ANOTHER

.....Respondents
4.

CRM-A-976-2022(O&M)
Date of Decision: 23.01.2024

M/S RAM JI STEELS

...Applicant-Appellant

Versus

SIMARPAL SINGH AND ANOTHER

.....Respondents
5.

CRM-A-979-2022(O&M)
Date of Decision: 23.01.2024

M/S RAM JI STEELS

...Applicant-Appellant

Versus

SIMARPAL SINGH AND ANOTHER

.....Respondents

CRM-A-900-2022 & 5 Other Cases

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6.

CRM-A-234-2023(O&M)

Date of Decision: 23.01.2024

M/S RAM JI STEELS

...Applicant-Appellant

Versus

SIMARPAL SINGH AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Pankaj Nanhera, and
Mr. Pradeep Duhan, Advocates
for the applicant-appellant

HARPREET SINGH BRAR, J. (ORAL)

CRM-46748-2022, CRM-47039-2022, CRM-49510-2022, CRM-49567-

2022, CRM-49589-2022, CRM-12121-2023

Allowed as prayed for.

CRM-46749-2022, CRM-47041-2022, CRM-49511-2022, CRM-49569-

2022, CRM-49591-2022

These are applications under Section 5 of Limitation Act, 1961 each seeking condonation of delay of 53 days in filing the respective accompanying applications under Section 378(4) Cr.P.C.

For the reasons mentioned in the respective applications, the same are allowed and the delay stands condoned.

CRM-12125-2023 in CRM-A-234-2023

This is an application under Section 5 of Limitation Act, 1961 seeking condonation of delay of 94 days in filing the accompanying petition under Section 378(4) Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay stands condoned.

CRM-A-900-2022 and 5 others mentioned above

1. This order of mine shall dispose of all the above-mentioned applications under Section 378(4) Cr.P.C. as they arise from the same financial matrix. For the sake of brevity, facts are taken from CRM-A-918-2022.

2. The above-mentioned instant applications under Section 378(4) Cr.P.C. have been preferred by the applicant firm through its proprietor Tushar Bhatia against the judgement dated 25/30.07.2022 passed by learned Judicial Magistrate Ist Class, Faridabad vide which the respective complaints instituted by the applicant firm under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) were decided and the present respondents were acquitted.

3. The facts, in brief, are that aforesaid complaints under Section 138 NI Act were filed against 4 accused, where accused No.1 is the partnership-firm namely 'M/s Klassic Industries', accused No.2, 3 & 4 are its partners. Present respondents being accused No.2 & 4 respectively were acquitted, whereas, accused no.1 & accused no.3 namely Manjit Kaur being an active partner were convicted. The applicant firm is engaged in sale-purchase of iron/steel goods. The respondents through their partnership firm placed various orders for iron/steel goods from the applicant firm. An open and running account was maintained by the applicant in the name of the firm of the respondents as they were long-standing customers. From the account books of the applicant, an amount of Rs.64,93,467/- was found to be due against the firm of the respondents as well as an earlier amount of Rs.64,54,635/-. The respondents as well as other accused issued the cheques bearing no.359224 dated 22.09.2017 for Rs.08,51,076/-, cheque bearing No.587011 dated 25.09.2017 for Rs.02,50,000/- & cheque bearing No.613227 dated 26.09.2017

for Rs.06,49,635/-. which were dishonoured with remarks 'Funds Insufficient' vide memo dated 21.12.2017, 13.12.2017 and 22.12.2017, respectively. The applicant issued a demand notice dated 09.01.2018 calling upon the respondents to make the payment but no payment was made despite the notice. Aggrieved by the same, the applicant firm preferred a complaint under Section 138 of the NI Act.

4. Having heard the learned counsel for the applicant and after perusing the entire record with his able assistance, it is manifestly clear that the cheques in question were not signed by the respondents but by another partner Manjit Kaur who was also the only partner to be actively involved in the day-to-day affairs of the accused firm and who was convicted by the learned trial Court. Further, respondent no.1 appears to be only a partner on record but there is no evidence on record which can show if he was actively involved in daily affairs of the accused firm whereas, there is sufficient documentary evidence to prove otherwise. Further, respondent no.2 is not even a partner as per the partnership deed which has been placed on record and has never been involved in the commercial affairs of the accused firm. Thereby, the stand taken by the learned trial Court that the foundational facts which are required to constitute the offence under Section 138 of the NI Act are not present qua the respondents stands validated.

5. Furthermore, 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.

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 in respective complaints which warrants interference by this Court. As such, there is no merit in the present applications and hence, the leave to appeal is denied in all of them, in terms of the above-said discussion. Pending applications, if any, shall stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

23.01.2024
Ajay Goswami

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