

220IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-465-2019
Date of Decision: 27.02.2024

Nazar Singh...Applicant-Appellant

Versus

Joginder Kumar...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mahesh Gupta, Advocate
for the applicant-appellant

Harpreet Singh Brar, J. (Oral)

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 15.11.2018 passed by learned Sub Divisional Judicial Magistrate, Dhuri in criminal complaint bearing CIS no. NACT/374/2016 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter ‘NI Act’).
2. Briefly, the facts are that the respondents-accused borrowed a sum of Rs. 3,00,000/- from the applicant-complainant in the second week of May, 2016. To discharge his liability, the respondent issued a cheque bearing no. 410835 dated 15.06.2016 for an amount of Rs. 3,00,000/-. On presentation for encashment, the said cheque was dishonoured vide memo dated 23.08.2016 with remarks- ‘funds insufficient.’ Thereafter, a legal notice dated 24.08.2016 was served upon the respondent to call upon him to make the payment. However, the respondent failed to make the requisite payment in the stipulated time and the present complaint was filed.

3. Having heard the learned counsel for the applicant-appellant and after perusing the record with his able assistance, it transpires that the applicant alleged to have known the respondent personally as he worked at M/s Khanna General Store, Sadar Bazar Dhuri. However, in his cross-examination, he changed his stance and deposed that the respondent introduced himself as a partner in the said firm. Curiously, he did not make any efforts to ascertain the same and advanced a loan of Rs. 3,00,000/- without obtaining any security document, pronote or receipt. Further, the applicant himself is under debt of about Rs. 15,00,000/- since 14.12.2011. In his cross examination, the applicant stated that he had advanced the alleged loan at an interest of 1.25% per month however, the same neither finds mention in the complaint nor in the legal notice. Cumulatively, the capacity of the applicant to advance such a loan is dubious at best. Moreover, the respondent examined Rajesh Kumar, owner of M/s Khanna General Store, Sadar Bazar Dhuri as DW1, who categorically stated that he is the proprietor of the said firm and the respondent neither worked there, nor is he a partner in the same. Therefore, the presumption under Section 139 of the NI Act has been successfully rebutted.

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

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 passed 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.

27.02.2024
Rajeev (rvs)

(HARPREET SINGH BRAR)
JUDGE

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