

CRM-A-1418-2019

219 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1418-2019
Date of Decision: 28.02.2024

Rajinder Singh

...Applicant-Appellant

Versus

Munshi Ram

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Navkesh Singh, Advocate
for the applicant-appellant

Harpreet Singh Brar, J. (Oral)

CRM-22195-2019

This is an application under Section 5 of the Limitation Act, 1971 seeking condonation of a delay of 41 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay of 41 days in filing the said application, is condoned.

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1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment dated 15.10.2018 passed by learned Sub Divisional Judicial Magistrate, Nabha whereby respondent-accused has been acquitted in criminal complaint no. 408 dated 27.11.2015 filed under Sections 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act') read with Section 420 of the IPC.

2. Briefly, the facts are that the applicant-complainant gave a friendly loan of Rs. 2,00,000/- in cash to the respondent-accused for some personal need,

as he was acquainted with him and his family. To discharge his liability, the respondent issued a cheque bearing no. 123102 dated 15.10.2015 for an amount of Rs. 2,00,000/-, in favour of the applicant. On presentation for encashment, the disputed cheque was dishonoured vide memo dated 20.10.2015 with remarks- 'funds insufficient.'. Thereafter, a legal notice was served upon the respondent on 25.10.2015 to call upon him to make the payment. Since the respondent failed to make the requisite payment in the stipulated time period, the instant complaint was filed.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that in his testimony as CW, the applicant-complainant could not state the date, month or even the year in which the said loan was advanced. Further, the account statements produced by the applicant-complainant indicate that the applicant did not have sufficient income a few months prior to the date of issuance of the disputed cheque to be able to disburse the alleged loan amount. The account statement from July, 2015 to October, 2015, the maximum balance recorded in the applicant's bank account is Rs. 26,230/-, Rs. 44,310/- and Rs. 1,03,886/-. Additionally, the applicant, in his cross-examination, has admitted to having taken multiple loans ranging from Rs. 25,000/- to Rs. 30,00,000/-. Therefore, the ability of the applicant to advance a loan of Rs. 2,00,000/- is dubious at best.

4. Moreover, the applicant alleges that the loan amount was given in cash, however, the origin of the same is uncertain. In his cross-examination, the applicant-complainant stated that he withdrew the said amount from the bank but then changed his stance to contend that some other person has made the payment to him. However, he concluded by stating that he does not remember who made

the said payment or on what date. Therefore, the presumption under Section 139 of the NI Act stands successfully rebutted.

5. 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** 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.

(HARPREET SINGH BRAR)
JUDGE

28.02.2024
Ajay Goswami

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