224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-3767-MA-2018
Date of Decision: 21.03.2024

RAVI KUMAR

...Applicant-Appellant

Versus

ANU

.......Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.K. Bansal, Advocate
for the applicant-appellant

****

<u>HARPREET SINGH BRAR, J.</u> (ORAL)

1. This instant application under Section 378(4) CrPC is preferred against the order of acquittal dated 17.11.2018 passed by learned Judicial Magistrate Ist Class, Ferozepur in criminal complaint No. NACT/812/2016 dated 04.10.2016 filed under Section 138/142 of Negotiable Instruments Act, 1881 (herein after referred as NI Act) read with Section 420 IPC.

2. The minimal facts as necessary for disposing this application are that in February, 2016, the respondent-accused borrowed a sum of Rs.2,00,000/- from the applicant-complainant with a promise to return the said amount within 4-5 months. Thereafter, in order to discharge to her legal liability, the respondent issued a cheque bearing No.563481 for an amount of Rs.2,00,000/- drawn on Bank of Baroda, Ferozepur, in favour of the petitioner. When the petitioner presented the said cheque for encashment, it was dishonoured vide memo dated 20.07.2016 bearing remarks ‘Funds Insufficient’. Subsequently, the petitioner served a legal notice dated

16.08.2016 upon the respondent calling upon her to make the cheque payment but she failed to pay the said cheque amount to the petitioner with the statutory period. Aggrieved by the same, the petitioner filed the complaint (supra) before the learned trial Court, wherein, the respondent was acquitted of the accusation under Section 138 of the NI Act. Hence, the petitioner has approached this Court by way of the present petition.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clear that that the signatures have been admitted by the respondent upon the cheque in question. However, the applicant has miserably failed to show any financial capacity to advance a loan of the abovesaid amount since the income tax returns of the applicant for the years 2011-12, 2012-2013 and 2013-2014 placed on record by him before the learned trial Court clearly show that his total annual income for the aforesaid years was Rs.1,58,000/-, Rs.1,69,500/- and Rs.2,09,700/-, respectively. The applicant also admitted in his cross-examination that his two children and his father are also dependent upon him. It is beyond imagination that the applicant having financial capacity the extent mentioned above would be able to lend such a huge amount to the respondent. Further, the applicant was unable to place on record the sale deed dated 11.01.2013 of the property sold by his father qua which he alleged that he had the sale consideration of the aforesaid sale lying at his house which he gave to the respondent. As per the version of the applicant, the sale consideration was obtained by his father in 2011 whereas he advanced the alleged loan in 2016, i.e., after 5 years of obtaining the said sale consideration, leading this Court to disbelieve the version of the applicant. Further perusal of the material on record shows that it

was alleged by the applicant that the body of the cheque in question was filled by the respondent herself but it is manifestly clear that it was not filled by the same person who signed the said cheque. Resultantly, it appears that an arbitrary amount was been filled by the applicant in order to misuse the cheque of the respondent which was already in his possession already. All the aforementioned facts clubbed together lead this Court to uphold the impugned order of acquittal.

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

21.03.2024
Ajay Goswami

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