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213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-71-2019(O & M)
Date of Decision: 20.01.2024

MANOJ MAHAJAN

...Applicant-Appellant

Versus

MOOL RAJ GUPTA

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Surinder Sharma, Advocate
for the applicant-appellant

HARPREET SINGH BRAR, J. (ORAL)

CRM-956-2019

This is an application under Section 5 of Limitation Act, 1961 seeking condonation of delay of 66 days in filing the accompanying application under Section 378(4) Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay of 66 days in filing the aforesaid application is condoned.

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1. This instant application under Section 378(4) CrPC is preferred against the judgement dated 05.07.2018 passed by learned Judicial Magistrate Ist Class, Batala vide which the complaint case No. 99 of 2016 dated 16.02.2016 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) has been dismissed and the present respondent has been acquitted.

2. The facts, in brief, are that the applicant and respondent had business terms in furtherance of which the respondent in order to discharge his

legal liability towards the applicant, issued a cheque bearing No.3407798 dated 07.01.2016 of Rs.15,00,000/- drawn on the Jammu and Kashmir Bank, Batala. However, when the applicant presented the said cheque before the bank, it was dishonoured with remarks 'Insufficient Funds' vide memo dated 12.01.2016. A demand notice dated 14.01.2016 was served upon the respondent but no payment was made to him. Aggrieved by the same, the applicant preferred the above-mentioned complaint before the learned trial Court.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it transpires from the evidence led by the applicant before the learned trial Court that there was no existing legally enforceable liability of the respondent towards the applicant at the time of issuance of the cheque in question. Further, the applicant even though alleged in his complaint that the loan amount was in relation to a business transaction but he changed his stance in his cross-examination that the said payment was made to the respondent on account of family relations. It was also admitted by the applicant that he never made any entry qua the loan amount, i.e., Rs.15,00,000/- in his account books and even the date of payment was never mentioned by him in the aforesaid complaint. Therefore, the learned trial Court has correctly observed that the applicant miserably failed to prove on record any legally enforceable debt against the respondent-accused for which the aforesaid cheque might have been issued in his favour.

4. 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

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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

20.01.2024
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>