



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

**CRM-A-2008-MA-2018
Date of Decision: 30.01.2024**

HARBHAJAN SINGH

.....APPELLANT

VERSUS

SANJEEV NAYYAR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Tarunvir Vashist Advocate
for the applicant/appellant.

SANDEEP MOUDGIL, J

CRM-33960-2018

Prayer in this application is under section 5 of Limitation Act for condonation of delay of 331 days in filing the appeal.

In view of the averments made in this application which is supported by an affidavit, the delay of 331 days in filing the present appeal is condoned.

Accordingly, the application is allowed.

CRM-A-105-2022

1. The application under [Section 378\(4\)](#) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 22.08.2017 passed by Additional Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar (in short, 'trial court') vide which respondent has been acquitted under section 138 of Negotiable Instruments Act 1881, (in short, 'the NI Act'), on the ground



that the appellant has miserably failed to bring home the guilt of the respondent-accused.

2. Briefly put forth, the facts of the case are that the respondent-accused represented himself as a travel agent to the applicant and Chamkaur Singh of village Chak Hajipur at K.S Carwash, Garshankar Road, Nawanshahr and believing it to be true, the applicant, Chamkaur Singh and Kuldeep Singh owner of K.S Carwash agreed to send Talwinder Singh(applicant's sister's son) to Canada and Mandeep Singh son of Joga Singh, Kuldeep Singh son of Gurmail Singh, Deepa and Rahul Sharma to Australia.

3. Pursuant to that, passports of aforesaid persons were handed over to the respondent-accused along with one Jarnail singh @ Raja son of Baldev Singh and thereafter time to time a sum of Rs. 10,00,000/-, 24,00,000/-, 10,00,000/-, 12,00,000/-, were paid to the respondent-accused by the applicant and Kuldeep Singh respectively and it is only when the respondent-accused failed to send the aforesaid persons abroad, the applicant and aforesaid persons demanded back their money to which the respondent-accused issued two cheques bearing no.000538 and 000537, both dated 05.07.2013 for sum of Rs. 33,00,000/- and Rs. 23,00,000/- respectively drawn on ICICI Bank, sector 46, Chandigarh which were dishonoured with remarks as '*Funds Insufficient*'. Thereafter, applicant got served a legal notice calling the respondent-accused to make the payment but despite that he failed to make the payment which compelled the applicant to register a complaint u/s 138 of N.I Act which has been dismissed by the trial court vide judgment dated 22.08.2017. Hence, the present appeal.



4. Counsel for the applicant contends that the trial court failed to appreciate the evidence put forth by CW2 namely Mandeep Singh and CW3 Gurdeep Singh wherein Mandeep Singh has clearly stated that he met the respondent-accused gave him Rs. 5,00,000/- alongwith his passport which in addition has been corroborated by CW3 where it is stated that another Rs. 6,00,000/- were paid to the respondent-accused on 05.05.2013

5. He further contends that the trial court has failed to appreciate the fact that the respondent-accused has been running an immigration racket wherein the innocent lives of the aspirants who are willing to go abroad are either ruined by surrendering them to the police in abroad or implicating them in drugs case. Moreso, the two cheques of total amount of Rs. 56 lacs were given to the applicant with an intention to cheat and defraud him.

6. He vehemently argues that the trial court has failed to acknowledge that the cheques issued by the respondent-accused were in discharge of his legal liabilities.

7. Having heard learned counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

8. It is evident from the record in hand, that accused-respondent is signatory of the cheque in question but on the other hand it is a settled principle of law that the accused-respondent can displace the presumption in favour of the holder on the scale of preponderance of probabilities and the lack of consideration or a legally enforceable debt, need not to be proved to the hilt.



9. Therefore, in my opinion, from the perusal of the file it is clearly evident that the applicant had admitted during his cross examination that he had not mentioned the exact date, month or year of making payment to the respondent-accused, no mention has been given in the affidavit as to how did he manage to arrange such a huge amount when it is proven fact that he is an agriculturist and in addition, he has also admitted that the respondent-accused never claimed himself to be a travel agent through publication or advertisement via newspaper, pamphlet or television. In addition, except the oral complaint of the applicant, there is no document to support the payment in question which compels this court to disbelieve the version of the applicant.

10. Moreover, it is well settled proposition of law that the complainant-appellant has to stand on own legs to prove its case beyond shadow of reasonable doubt by proving the essential ingredients of section 138 of the NI Act. However in the instant case, respondent-accused has been able to rebut the presumption attached to the cheque beyond preponderance of probabilities

11. In the light of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court dated 22.08.2017 and as such , having no merit, the appeal stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

30.01.2024

anuradha/poonam negi

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

