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**216 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**CRM-A-424-2019 (O&M)
Date of Decision: 10.01.2025**

BAKSHO @ GURBUX KAUR

...Applicant-Appellant

V/S

BALJIT KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Onkar Rai, 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 20.11.2018 passed by learned Judicial Magistrate Ist Class, Phillaur in criminal complaint No. NACT/200/17 filed under Section 138 of Negotiable Instruments Act.

2. In brief, complainant has submitted that accused-respondent was known to her since long and she borrowed an amount of Rs.11,50,000/- from her on various occasions in the presence of witnesses for domestic purpose with promise to return the same in short time. Thereafter, complainant requested to return said amount and lastly, accused-respondent issued cheque No.142724 dated 15.04.2017 in her favour for an amount of Rs.11,50,000/- to be drawn on SBI with assurance that it would be encashed on presentation. When she presented said cheque for encashment with Central Bank of India, Goraya, the same was returned unpaid being dis-honoured with memo of "Funds Insufficient" vide return memo dated 09.05.2017 as

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there were no sufficient funds in account of accused. Further, complainant again presented said cheque as per asking of accused-respondent that she would deposit sufficient funds for clearance on 07.07.2017 in Central Bank of India, Goraya, which was returned unpaid again with the similar remarks vide memo dated 07.07.2017. Thereafter, complainant served statutory legal notice dated 22.07.2017 (wrongly mentioned as 20.07.2017) through registered post through her counsel to the accused calling upon her to return cheque amount, but to no effect. So, complainant has filed present complaint.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that learned Court below has opined that it is very hard to believe that a widow lady, who herself was dependent upon her brothers for meeting her day to day expenses had lent such huge amount of Rs. 11,50,000/- to the accused-respondent and that too, without any writing and when the respondent is not her relative. It was made clear that as per the statement of complainant made during cross-examination, she stated to mention such borrowings in her income tax returns, which is not so as per Ex. C-9 to Ex. C-11. It was concluded that it cannot be presumed that she had actually given/lent such huge amount to the respondent as there was non-disclosure of such amount in the Income Tax Returns by the complainant. It was further concluded that mere signing of the cheque was not sufficient to conclude the commission of offence under Section 138 of NI Act, when there is no material available on record to prove the loan transaction and defect are there regarding date



of payment of alleged loan. Thus, learned Court below has rightly come to the conclusion that complainant had failed to prove legal liability of accused-respondent and rightly acquitted her.

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. The reliance is placed on the judgment of Hon'ble Supreme Court passed in **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.

6. Pending miscellaneous application(s), if any, shall also stand disposed of.

10.01.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No