

CRM-A-406-MA-2013
Date of decision: 25.04.2025

...APPLICANT

V/S

...RESPONDENT

Present: Mr. Sandeep Kumar Yadav, Advocate and
Ms. Sangeeta Yadav, Advocate for the applicant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application has been filed against the impugned judgment dated 13.06.2013 passed by learned Chief Judicial Magistrate, Narnaul, whereby, respondent has been acquitted in a complaint filed under Section 138 of Negotiable Instruments Act, 1881.
2. Briefly stated, the applicant had given a loan to the respondent. In discharge of his legal liability, the respondent issued a cheque bearing No.924709 dated 10.02.2010 for an amount of Rs.1,50,000/- payable at State Bank of Patiala, Branch Office District Courts, Narnaul. However, on presentation, the said cheque was dishonoured vide return memo dated 07.04.2010 with remarks "Insufficient Funds". Thereafter, the applicant served a legal notice dated 08.04.2010 upon the respondent, however, the respondent failed to make the payment. Hence, the complaint.
3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the applicant/complainant in his cross-examination as CW-1 deposed that he had



given a loan of Rs.1,50,000/- to the accused/respondent in the month of December, 2009 and at that time, he had taken a loan from his bank. In those circumstances, the capacity of the complainant to give loan to the accused is doubtful as no reasonable person would give a loan to another person, who is not related to him, by taking loan from the bank. Further, the complainant deposed that he is an income-tax assessee and regularly filing his income-tax return but he had not shown the accused as his debtor in his income-tax return. As such, only vague allegations are levelled by the complainant/applicant against the accused/respondent and the prosecution has failed to prove its case beyond the shadow of reasonable doubt. As a result, the evidence led by the applicant/complainant does not inspire confidence of this Court.

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 vs. State of H.P., 1973 (2) SCC 808* and *Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415*). A Division bench of this Court in the judgment of *State of Haryana vs. Ankit and others* passed in *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 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.

April 25, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |