220 IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CRM-A-1006-MA-2016 (O&M)
Date of Decision: 09.01.2025

M/S HANS RAJ AND SONS

…Applicant-Appellant

V/S

FAQUIR CHAND **…Respondent**

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amaninder Preet, Advocate (Amicus Curiae)
for the applicant-appellant(s).

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<u>HARPREET SINGH BRAR J. (Oral)</u>

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 21.03.2016 passed by learned Judicial Magistrate Ist Class, Guhla in criminal complaint No. 10 of 2014 filed under Section 138 of Negotiable Instruments Act.

2. The case of the complainant is that the complainant firm carry on the business of commission agency at Anaj Mandi, Cheeka and deals in selling the food grains of the farmers/its customers through its commission agency and also advances money to its customers for raising crops etc., as per their requirement which amounts are to be adjusted by the customers by selling their food grains through the commission agency of the complainant firm. The accused-respondent had borrowed an amount of Rs.3,50,000/- in cash from the complainant-applicant firm on 05.03.2011 and got the entry of the same made in the account books of the complainant firm duly maintained by it in its due regular course of business at its premises and put his signature on the said entry on receipt of the said borrowed amount, admitting the correctness of the same and passing of the consideration. The

respondent was to get the said borrowed amount adjusted against the sale proceeds of his food grains to be sold through the commission agency of the complainant firm but the respondent did not sell any of his food grains after borrowing the said amount through the commission agency of the complainant firm. The complainant firm was entitled to recover the said borrowed amount alongwith interest thereon @18% PA as per the custom and usage prevailing in the Grain Market at Cheeka which comes to be Rs. 1,75,525/- as interest from the date of said advancement i.e. 05.03.2011 and till the settlement of account i.e. 02.12.2013. On demand of said borrowed amount and interest thereon by the complainant, the accused issued a cheque no.168382 dated 03.12.2013 for Rs.5,25,000/- as full and final payment, in favour of the complainant firm, in discharge of his existing and legally enforceable liability of making the payment of said borrowed amount and interest thereon to the complainant firm to be drawn out of his account with PNB, Guhla. The complainant presented the said cheque for collection to its banker UBI, Cheeka but the said cheque has been returned as dishonoured by the banker of the accused PNB, Guhla vide memo dated 04.12.2013, on the grounds funds insufficient. The complainant got issued a statutory notice dated 12.12.2013 upon the accused-respondent demanding the said amount of Rs.5,25,000/- and with a separate copy of the same through ordinary post which has been duly received by the respondent. Respondent got served reply dated 28.12.2013 of the said notice through his counsel Sh.B.K.Kalra, Advocate upon the counsel for the applicant. Hence, the 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 complainant has to advance money/loan for agricultural purpose but complainant had not shown the license under Money Lenders Act which is necessary for lending money for the advancement of loan to the farmer. In defence, accused-respondent has stated that his five cheques of Sr. No. 168381 to 168385 have been lost and he also moved an application dated 05.01.2010 to his bank PNB, Guhla and he has given the due intimation regarding misplacing of the cheque and the said cheques have been shown as destroyed in the record of the bank and it has falsely been dishonored by showing the funds as insufficient though it should be shown the cheque being lost or destroyed as per the application dated 05.01.2010. To prove his case, respondent-accused has examined DW-1 Harjinder Singh, Head Cashier, who has proved on record that the bank had already been intimated that cheque No. 168381 to 168385 have been lost and he had produced the attested copy of the application. Thus, it was proved on record that the Bank was in receipt of the application regarding misplacing of the cheques in dispute and they have dishonoured the cheque due to insufficiency of the funds but the fact regarding misplacing of the cheques and giving the application could not be denied and it was the fault of the bank.

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** 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.

7. High Court Legal Services Committee is directed to pay remuneration to *amicus curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

09.01.2025
Ajay Goswami

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*