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

CRM-A-1267-MA-2018(O&M)

Date of Decision: 09.01.2025

JAGMOHAN JOSHI

...Applicant-Appellant

V/S

JIYA LAL

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.S. Cooner, Advocate
for the applicant-appellant.

Ms. Anjali Bangar, Advocate
for the respondent.

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 17.03.2018 passed by learned Judicial Magistrate Ist Class, Naraingarh in criminal complaint No. 5/2007 filed under Sections 138/142 of Negotiable Instruments Act.

2. It is the case of the complainant that the accused-respondent was in friendly relations with him. The accused was constructing his residential house and hence was in dire need of money for the said purpose. He requested applicant-complainant for monetary help. Keeping in view the friendly relations, total amount of Rs.1,00,000/- was forwarded to the respondent as financial assistance from time to time and on various occasions. The complainant alleges that thereafter the respondent failed to return back the said amount and it was after repeated requests that he issued a cheque bearing No.445514 dated 03.10.2007 for an amount of Rs.1 lakh drawn on Oriental Bank of Commerce. The cheque in question was then

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presented by the complainant to his banker, but the same was returned back dishonoured vide memo dated 09.10.2007 with reason "Account Closed". Thereafter, the applicant-complainant issued a legal notice dated 24.10.2007, but the accused failed to tender/pay the amount of the cheque within the stipulated period, and hence, the complainant preferred the present complaint seeking thereby action against the accused.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that learned Court below has opined that the accused-respondent has claimed that the cheque in question was deposited as security by him to the NACT Co-operative Society with regard to a loan of Rs. 60,000/- that was availed by him from the said society. In this regard, he examined DW-1 i.e. retired Inspector from the office of AR Co-operative Society and DW-2 i.e. the Sub Inspector from the office and the evidence of these witnesses clearly indicate that a complaint was made in the year 2008 by the accused-respondent alleging therein that NACT Co-operative Society is in possession of several cheques belonging to him which were deposited as security towards the loan availed by him. Moreover, the complainant claimed that a friendly loan was forwarded by him to the respondent in the months of January, March and April 2010 but later on he retracted from his statement. Thus, his evidence was found to be untrustworthy. It was further opined by learned Court below that applicant-complainant claimed that the amount of Rs. 1,00,000/- was forwarded as financial assistance over a period of time but he failed to state the months or the year as to when the said financial assistance was alleged to be provided to the accused-



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respondent. Thus, learned Court below has rightly observed that complainant-applicant has failed to prove the existence of debt in his favour and dishonour of cheque in question. Thus, no offence under Section 138 of Negotiable Instruments Act was made out against the respondent.

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.

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

09.01.2025

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No