223 IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CRM-A-1584-MA-2015 (O&M)
Date of Decision: 08.01.2025

CHAUDHARY STONE CRUSHER THROUGH PARTNER ROHIT DALAL …Applicant-Appellant

V/S

RAJBIR SINGH JAGLAN …Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shalender Mohan, Advocate
for the applicant-appellant.

Mr. Aman Priye Jain, Advocate for the respondent.

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HARPREET SINGH BRAR J. (Oral)

CRM-30901-2015

This is an application under Section 5 of the Limitation Act for condonation of delay of 02 days in filing the application seeking leave to appeal.

For the reasons mentioned in the application, same is allowed and delay of 02 days in filing the application seeking leave to appeal is condoned.

CRM-A-1584-MA-2015

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 10.07.2015 passed by learned Judicial Magistrate Ist Class, Gurgaon in criminal complaint bearing No. 3794 dated 14.05.2012/28.02.2013 filed under Section 138 read with Section 142 of the Negotiable Instruments Act.

2. Brief facts of the case of the complainant are that the complainant is running his business in the name and style "Choudhary Stone Crusher" at Village Mothuka, Tehsil Neem-Ka, Thana (Rajasthan)

and the respondent had business relations with the complainant and the respondent had purchased Rori from 01.04.2011 to 24.08.2011 on credit basis from the crusher of the applicant-complainant at village Mothuka, Tehsil Neemka-Thana from his own transport. In discharge of his above debt or lawful liability, the respondent issued a cheque bearing no. 491703 dated 01.10.2011 of Rs. 35,00,000/- drawn on Oriental Bank of Commerce, SCR-62, Sector 17, Urban Gurgaon Estate, in favour of the applicant-appellant. Further at the time of issuance of the said cheque the respondent had promised to the applicant that the said cheque shall be got encashed immediately after its presentation in the bank. Thereafter the applicant-appellant on the assurance of the respondent had deposited the above cheque in his account of Oriental Bank of Commerce, Sector-17, Gurgaon Branch, on 22.11.2011, but shocked to know on 23.11.2011 when he received back the said cheque with the report of "Insufficient Fund" Immediately thereafter the applicant contacted the respondent but the respondent assured the complainant that the said cheque would be honoured if it will be deposited in the first week of January, 2012. On his assurance the applicant-complainant again deposited the said cheque in his said account but he was shocked to know on 04.01.2012 when he received back the said cheque with the report "Insufficient Fund" and the complainant again contacted the respondent and he again assured the applicant that in the second week of March, 2012 the said cheque will be honoured and that time his account will have sufficient fund for encashment of the said cheque. On the assurance of the respondent, the applicant-complainant deposited the said cheque again in his said account but he again shocked to know on 12.03.2012 when he received back the said cheque with the report "Insufficient Fund" Thereafter the complainant issued a legal notice to the respondent on 31.03.2012. Thereafter despite being served with legal notice the respondent did not make the payment within a mandatory period of 15 days of the Legal Notice. Hence the respondent had committed the offence punishable under section 138 of NI Act.

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 had to be established by the accused-respondent that he did not issue the cheque in dispute in discharge of any legally enforceable debt or liability and to establish the same the respondent could even use the evidence adduced by the complainant. As per the case of the complainant he supplied material to the accused-respondent w.e.f. 01.04.2011 till 24.08.2011 and in that regard he has also produced upon the case file bills i.e. Ex. C-4 to Ex. C-348. Learned Court below concluded that out of the aforesaid bills, 71 bills as produced by the complainant upon the case file are dated beyond 24.08.2011, further these bills amount to Rs. 7,30,080/-. In the same way, out of these bills there are eight bills amounting to Rs. 65660/- which either did not bear the vehicle number or party name or date or have already been paid in cash. Hence, this shows that certain bills amounting approximately to Rs. 8,00,000/- are such for which the respondent cannot be made liable as per complaint of the complainant itself. Hence, if these bills are removed from the total bills adduced upon the case

file, a total amount to the tune of Rs. 27,00,000/- approximately comes out as due towards the respondent, while the cheque in dispute is for Rs. 35,00,000/-. It was also opined by learned Court below that the bills Ex. C49 wherein bill No. 772 is dated 30.08.2011 while Ex. C-48 bearing bill No. 771 is dated 10.01.2011 and in the same manner the bill bearing No. 686, 685, 726, 730, 728, 731, 765 and 764 are also not in continuity. Thus, the complainant had failed to adduce any receipt qua the delivery of the material upon the case file. An amount of Rs. 80,00,000/- was transferred by the respondent-accused in the account of mother of the complainant Smt. Bimlesh Dalal and in the same way on 31.07.2017, the accused also transferred an amount of Rs. 1,51,00,000/- in the account of father of the complainant namely Jai Parkash Dalal. It was also stated that accused-respondent also transferred an amount of Rs. 35 lacs on 25.03.2008 in the account of Leo and Rs. 25 lacs on the same day in the account of Shiv. Thus, there was no dispute regarding transfer of such huge amount from the account of respondent-accused to the account of parents of the complainant and complainant has himself admitted in his cross-examination that he has been doing the business of supplying such material since 2010 and has not been able to explain as to why huge amount of Rs. 80,00,000/- and Rs. 1,51,00,000/- were transferred by the accused-respondent in the bank account of his parents. Thus the case of the complainant did not stand proved.

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.

(HARPREET SINGH BRAR)
JUDGE

08.01.2025
Ajay Goswami

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