



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

**CRM-A-969-MA-2017 (O&M)  
Date of Decision: 08.01.2025**

**SATBIR SINGH**

**...Applicant-Appellant**

**V/S**

**BALINDER**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Himanshu Choudhary, Advocate for  
Mr. Ankit Aggarwal, Advocate for the applicant-appellant.

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**HARPREET SINGH BRAR J. (Oral)**

**CRM-14490-2017**

This is an application under Section 5 of the Limitation Act for condonation of delay of 473 days in filing the application seeking leave to appeal.

For the reasons mentioned in the application, same is allowed and delay of 473 days in filing the application seeking leave to appeal is condoned.

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1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 07.11.2015 passed by learned Judicial Magistrate Ist Class, Karnal in criminal complaint bearing No. 983 of 2014 filed under Section 138 of Negotiable Instruments Act.

2. The instant complaint has been filed by the complainant against the accused-respondent under section 138 of the Negotiable Instrument Act, 1881 (hereinafter called as Act), on the averments that the respondent was having friendly relations with the complainant on account of visiting terms between them. On 10.02.2014, the respondent approached the complainant to lend an amount of Rs. 2,00,000/-for a period of two



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months. Acceding to his request, the complainant gave an amount of Rs. 2,00,000/- to the respondent. After expiry of two months, the complainant-applicant requested the respondent to repay the said amount and in order to discharge his legal liability, he issued a cheque for a sum of Rs. 2,00,000/- bearing no.494065 dated 10.04.2014 in his favour drawn at State Bank of India, Nissing, District Karnal with request to present the cheque in question for encashment after 1<sup>st</sup> June 2014. Accordingly, on 04.06.2014 the complainant-applicant presented the cheque in question for encashment but the same was returned back with Memo having remarks "**Funds Insufficient/Exceeds Arrangement**" and the respondent was given legal notice within time. The respondent sent reply dated 26.06.2014 to the legal notice but he did not make the payment and hence, the instant 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 applicant-complainant has deposed that he was a businessman as well as farmer and was also doing the business of spare parts and sale & purchase of old machine and that he knew the respondent from the last two years as he has sold one machine to him. Perusal of cross-examination of the applicant-complainant clearly reveals that initially he denied of any kind of relation with the Swaraj Agency, the showroom of which is situated just besides his shop having a common wall but thereafter he admitted that his mobile number has been clearly mentioned on the letter head of the Agency. Regarding this fact, no such satisfactory reply was given as to why his mobile number was written in the letter head of the Agency specially when he deposed that he has no

relation of any kind with the said agency. Perusal of reply to the legal notice given by the respondent clearly indicates that from the first day, the respondent has taken stand that the applicant-complainant was working as Agent/Proprietor/Partner of Swaraj Agency and respondent wanted to purchase tractor and he took the tractor on finance, in which the complainant helped the respondent in obtaining the loan and he had given 23 blank signed cheques to the applicant-complainant as security to get the tractor financed from Cholamandlam Finance Company and due to some manufacturing problem in the said tractor, a consumer case was filed by the respondent, in lieu of which the instant cheque has been used by the applicant-complainant deliberately and harassed the respondent. To corroborate his stand, the respondent in his reply to the legal notice has brought on record the copy of complaint filed by him before Consumer Form as well as copy of complaint filed by the Cholamandlam Finance Company against the respondent under Section 138 of Negotiable Instruments Act. The applicant-complainant has also admitted his mobile number which is shown on the letter head of the Agency and no satisfactory explanation was given regarding the same. Therefore, it was found by learned Court below that in the present case existence of legally recoverable debt and liability which happens to be an important ingredient of the offence in question is not being fulfilled and the applicant also appears to have taken up and proved a probable defence in his favour till the requisite level of proof being preponderance of probabilities and has been able to rebut the existence of presumption against him.

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.

08.01.2025 **(HARPREET SINGH BRAR)**  
**JUDGE**

*Ajay Goswami*

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| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |