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

**CRM-A-455-2022**

Date of Decision: **13.02.2025**

Chhinder Kaur

...Appellant

Versus

Amarjit Singh and another

...Respondents

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

**Present:** Mr. P.K.S. Phoolka, Advocate for the applicant-appellant.

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**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 07.03.2022 passed by learned Judicial Magistrate Ist Class, Bathinda in a complaint under Section 138 of the Negotiable Instruments Act, 1881 read with Section 142 of NI Act and Section 420 of IPC.

2. It is the case of the complainant that the accused-respondent No.1 took a friendly loan of Rs.6,00,000/- from the complainant in the presence of marginal witnesses and in discharge of his lawful existing liability towards the complainant to repay the aforesaid amount, accused-respondent No.1 issued a cheque bearing No.994668 dated 27.10.2016 for a sum of Rs.6,00,000/- in favour of complainant out of his account maintained with Punjab National Bank, Bathinda and assured the complainant that the same will be honoured as and when presented for encashment after 30.11.2016. The complainant presented the said cheque for clearance in her account with Oriental Bank of Commerce, Bathinda on 02.12.2016 which was further sent to the banker of accused for clearance but the same was returned dishonoured with remarks "Funds Insufficient" vide memo dated 02.12.2016. The complainant informed

about the same to the accused-respondent No.1 and he requested the complainant to present the cheque for encashment after 07.12.2016 and assured the complainant to arrange sufficient funds in his account and the complainant *bonafidely* again presented the cheque in question for encashment on 08.12.2016 but the same was again remained dishonoured with remarks "Funds Insufficient". The complainant again informed the accused-respondent No.1 about dishonour of the cheque and accused-respondent No.1 proclaimed that due to the demonetization, the amount could not be arranged and requested to present the cheque for encashment after 31.12.2016. The complainant again presented the said cheque for encashment in her above said account but the same was again dishonoured and returned with the remarks "Funds Insufficient". Thereafter, complainant got issued a legal notice upon the accused through her counsel intimating the accused about the dishonour of the cheque and recalling to make the payment but the accused failed to make the payment of dishonoured cheque. Hence, the complaint under Section 138 of N.I. Act has been filed.

3. Having heard the learned counsel for the appellant and after perusing the record of the case with his able assistance, it transpires that learned Court below has opined that the cross examination of appellant-complainant while appearing as CW1 is of vital importance. The complainant in her cross-examination has stated that she obtained Rs.6,00,000/- from her brother, who had sold his land. She has further stated that the accused-respondent No.1 borrowed the amount on interest. She has further stated that she neither have any income nor any property. She has specifically admitted that she was not having capacity to pay Rs.6,00,000/- to the accused-respondent No.1. The complainant has not examined her brother to prove the

fact that she took amount from him and he sold his land. It is strange that huge amount has been lent without execution of any document. It is noteworthy that on dated 29.07.2019, the cross-examination of complainant was deferred for production of slip pertaining to money, but on 16.08.2019 when the complainant appeared for her cross-examination she has deposed that she could not produce such document and she showed inability to produce the sale deed vide which her brother sold the land. In these circumstances, it could not be believed that the accused borrowed Rs.6,00,000/- from the complainant. Moreover, the date, month and year of such transaction has not been disclosed either in the complaint or while appearing as CW1. It has been stated in the complaint that it was friendly loan, but during cross-examination the complainant has admitted that she does not have friendly relationship with the accused. So, it is highly improbable that the complainant who has no source of income and friendly relations with the accused would advance relatively huge amount of Rs.6,00,000/- to the accused and that too without any documentation or security.

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.

13.02.2025  
*Parveen kumar*

(HARPREET SINGH BRAR)  
JUDGE

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