

240(2)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRM-A-1393-2023 (O&M)
Date of decision: 04.02.2025

SURENDER KUMAR

...APPLICANT

V/S

CMD ANIS KHAZI

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mukesh Yadav, Advocate
for the applicant.

HARPREET SINGH BRAR, J. (ORAL)CRM-41824-2023

This is an application under Section 5 of the Limitation Act read with Section 482 of Cr.P.C. for condonation of delay of 60 days in filing the application seeking leave to appeal.

For the reasons mentioned in the application, same is allowed and delay of 60 days in filing the application seeking leave to appeal is condoned.

CRM-A-1393-2023

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 25.05.2023 passed by learned Judicial Magistrate Ist Class, Mohindergarh in complaint bearing CIS No. NACT-96-2017 filed under Section 138 of Negotiable Instruments Act.

2. Applicant in his complaint has averred that he is Permanent Resident of Mohindergarh and that the respondent in discharge of his pre-existing liability had issued the Cheque bearing No. 262687 in the sum of ₹1,00,000/-drawn on the State Bank of India, Branch Lower Parel Mumbai, Maharashtra of Account No.30024044914. The respondent put his signature on the aforesaid Cheque and assured the applicant that when the applicant wants to obtain the money, he can present the said Cheque and get the same encashed.



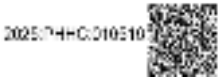
The applicant was in the need of money and therefore, the applicant deposited the abovementioned Cheque with his banker for encashment/collection of the amount. However, the said Cheque on presentation was dishonoured with remarks "Insufficient Funds" on dated 14.02.2017. The banker of the applicant returned the original Cheque along with the Bank Return Memo dated 14.02.2017 to the applicant. On dated 18.02.2017, the applicant got issued a Statutory Demand Notice dated 18.02.2017 in accordance with provisions of law through his Counsel vide Registered Post to the respondent on his Permanent Resident. Despite issuance of Statutory Demand Notice, no reply was given nor any payment was made by the respondent, hence, the action for prosecuting him has been initiated by institution of instant complaint on dated 20.04.2017 for commission of offence punishable under Section 138/142 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 the applicant has not brought forth any detail regarding any pre-existing liability on the part of the respondent. In his cross-examination, the applicant-Surender had admitted that there was no personal liability of respondent-Anis Khazi, rather the liability was that of company. Thus, the applicant has clearly failed to discharge the initial burden of proving the existence of legally enforceable debt owed by the respondent. Further, the applicant had invested in the different plans of Networth Marketing Pvt. Ltd. Company and his investment did not come into fruition in the way he had hoped, owing to some irregularities on part of the company, causing it to face proceedings before the Stock and Exchange Board of India.



4. Furthermore, in the present case, the applicant has not arrayed Net Worth Marketing Limited as an accused. It has been categorically admitted by the applicant that the liability was of the company and not of the respondent Anis Khazi in his personal capacity. Therefore, it was incumbent upon the applicant to array the company as accused as per Section 141 of NI Act. Moreover, no averment was made in the complaint or in the evidence stating that the respondent was responsible for the conduct of the day to day affairs of the company. Learned trial Court has correctly placed reliance upon the judgment rendered by Hon'ble Supreme Court passed in ***Sabitha Ramamutrhy and Another Vs. RBS Chanbasavaradhya 2006(10) SCC 581*** to conclude that while it is not necessary for the applicant to specifically reproduce the Section 141 of NI Act, but he must make a clear statement of fact so as to enable the Court to arrive at a *prima facie* opinion that the respondent is vicariously liable. The applicant himself admitted the liability of the company and the cheque was also drawn on the account of the company. Thus, he was obliged to comply with the statutory requirement of issuing a notice to the company before filing the present complaint. Since the applicant has not complied with the pre-requisite of serving a legal notice to the company before filing the complaint, the same is non-maintainable.

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 vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others vs. 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.

February 04, 2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |