

240(3)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-A-1430-2023 (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-45655-2023**

This is an application under Section 5 of the Limitation Act read with Section 482 of Cr.P.C. for condonation of delay of 66 days in filing the application seeking leave to appeal.

For the reasons mentioned in the application, same is allowed and delay of 66 days in filing the application seeking leave to appeal is condoned.

CRM-A-1430-2023

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-239-2017 filed under Section 138 of Negotiable Instruments Act.

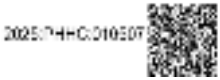
2. The brief facts of the present case are that the respondent, by admitting his pre-existing liability, had issued a Cheque bearing No.262692 on 30.06.2017 amounting to ₹1,00,000/- of State Bank of India Branch Lower Parel Branch (03428) B-166, Mafatlal Chambers. N.M.Joshi Marg, Lower Parel, Mumbai, Maharashtra 400013 of his Account bearing No.30024044914 in favour of the applicant. Thereafter, the applicant has deposited said Cheque in his bank i.e. State Bank of India KV Branch Mohindergarh in his Account



bearing No.20167736542 for realization of the amount on 19.07.2017, but said Cheque was returned by the Banker of the applicant with vide Return Memo dated 20.07.2017 with remarks "Funds Insufficient." Thereafter, the applicant informed the respondent about dishonour of above said Cheque, but the respondent did not pay any heed. Hence, the applicant got issued a Registered Legal Notice dated 28.07.2017 to the respondent under Section 138 of NI Act (as amended up to date), which was received to the respondent, but he did not pay the amount of the Cheque to the applicant. Hence, the present 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 the applicant has not brought forth any detail regarding any pre-existing liability on the part of the respondent. In the cross-examination, the applicant-Surender had admitted that there was no personal liability of respondent-Anis Khazi, rather the liability is 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.

4. Furthermore, the applicant has not arrayed Net Worth Marketing Limited as 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. The applicant himself admitted that 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 requirements 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

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