

236

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1531-2024(O&M)

Reserved on: 08.01.2025

Pronounced on: 14.01.2025

Mohali Petrochem Limited through its Authorised Official Sh. Chitranjan
Aggarwal ...Applicant-Appellant

versus

Vishal Sharma and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kshitiz Goel, Advocate
for the applicant-appellant

Harpreet Singh Brar, J.CRM-46387-2024

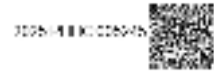
This application has been preferred under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 115 days in filing the accompanying application seeking leave to appeal.

For the reasons mentioned in the application, the same is allowed and delay of 115 days in filing the accompanying application seeking leave to appeal is hereby condoned.

CRM-A 1531-2024

1. The present application is preferred under Section 419(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') against the judgment of acquittal dated 08.05.2024 passed by learned Judicial Magistrate Ist Class, Chandigarh in criminal complaint no. 907 of 16.01.2019 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

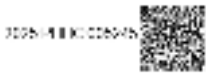
2. Briefly, the facts are that the applicant-appellant is an authorised dealer of M/s Hindustan Petroleum Corporation Limited and is involved in the business of selling petroleum products/ high speed diesel. The applicant-



is the sole proprietor. The outstanding balance stood at Rs. 1,77,632.15/- as on 27.06.2017. To clear the same, a cheque bearing No. 560997 dated 28.11.2018 for Rs.1,77,632/-, bearing the signature of respondent No.1 was given to the applicant-appellant. On presentation for encashment, the said cheque was dishonoured vide memo dated 29.11.2018 citing insufficient funds. Consequently, a legal notice dated 21.12.2018 was served upon the respondents-accused. However, the respondents failed to clear the dues within the stipulated period and the complaint(supra) was filed.

3. Having heard the learned counsel for the applicant-appellant and after perusing the record of the case with his able assistance, it transpires that the representative of the applicant-appellant, in his testimony as CW1, could not state as to when dealings began between the parties. Before getting into business with respondent No.2, the applicant-appellant dealing with HP Autocad or Ashmit HP Center. The case of the applicant-appellant is that the balance amount with respect to the business with HP Autocad was carried forward in their account books. However, there is no document on record which indicates that the respondents owed money to HP Autocad and the same could be recovered by the applicant on its behalf. In fact, even the existence of such a legal liability of the respondents towards HP Autocad remains unproven.

4. In order to attract the rigours of Section 138 of the NI Act, it is of the utmost importance that a cheque is issued in order to discharge a legal liability. Since the amount was owed by the respondents to HP Autocad, no legally enforceable debt is owed by them to the applicant-appellant. Further, it is the case of the respondents that the cheque in question was issued as a security cheque to HP Autocad. As such, cumulatively, the respondents have been



successful in rebutting the statutory presumptions of Section 118 and 139 of the NI Act.

5. 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, Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415* and *Hari Ram vs. State of Rajasthan (2000) 9 SCC 136*). 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.

6. 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.

14.01.2025
manisha

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No