



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

CRM-A-1541-2024

Date of decision: 08.01.2025

SANDIP SINGH

...APPLICANT

V/S

AKSHAYDEEP @ AKASHDEEP SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Suneet Pal Singh Aulakh, Advocate
for the applicant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application is preferred against the judgment of acquittal dated 17.09.2024 passed by learned Additional Chief Judicial Magistrate, Kapurthala, in a complaint filed under Section 138 of Negotiable Instruments Act, 1881.

2. Briefly stated, the case of complainant/applicant/applicant is that respondent/accused owed a friendly loan of Rs.19,89,000/- from the complainant/applicant, and in order to discharge his legal liability, respondent/accused issued a cheque bearing no.441678 dated 17.12.2020 amounting to Rs.9,89,000/ in favour of the complainant/applicant drawn on Yes Bank, Jalandhar Road, Kapurthala and the accused assured the complainant/applicant that the said cheque will be duly honored as and when presented for its encashment. It is further alleged by the complainant/applicant that as per the assurance of the respondent/accused, the complainant/applicant presented the above-said cheque for realization to HDFC Bank, The Mall, Kapurthala, who further sent the same for collection to Yes Bank, Jalandhar Road, Kapurthala but the same was dishonored and was returned to the



complainant/applicant without making any payment vide memo dated 19.12.2020 with the remarks "Funds Insufficient". In this way, the respondent/accused intentionally and knowingly issued the said cheque to the complainant/applicant in order to defraud and cheat the complainant/applicant knowing fully well that there were no funds sufficient in his account to honor the cheque. Thereafter, the complainant/applicant through his counsel issued a registered legal notice dated 30.12.2020 to the respondent/accused calling upon him to make payment of the cheque amount to the complainant/applicant within a period of 15 days from the receipt of the said legal notice. The respondent/accused duly received the said notice, which is clear from the acknowledgment received by the counsel for the complainant/applicant, but in spite of receipt of the legal notice, he failed to pay the cheque amount to the complainant/applicant. In this way, the accused has committed an offence punishable U/S 138 of Negotiable Instrument Act. Hence, complainant/applicant has forced to file 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 complainant/applicant has not mentioned the date, month, year and place of advancement of the above-said friendly loan either in the complaint or during his evidence. Further, the complainant/applicant has tendered bank statements to prove that he has given different amounts on the different dates to the respondent/accused, but from the documents brought on record, it is evident that there are so many entries regarding the transfer of the amount between the parties. Further, statement of account also prove the existence of M/s Amarnath Enterprises and the complainant/applicant admitted in his cross-examination that they started above-named joint business and again said business belongs to



the respondent only and he used to take money from him to give profit to him, which rebutted the presumption in favour of the applicant/complainant. Furthermore, the complainant/applicant tendered documents i.e. original cheque, memo, legal notice, postal receipt, according to which, the complainant/applicant presented the cheque for encashment and the same got dishonoured with the remarks “Funds Insufficient” but since the complainant has failed to prove that there was any legally enforceable debt towards the respondent, the respondent cannot be convicted on the basis of above document. The applicant/complainant placed reliance on documents i.e. receipt of payments, which were marked and the law in this regard is well settled that marked documents cannot be read into evidence. As a result, the evidence led by the applicant/complainant do not inspire confidence of this Court.

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 in *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 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.

January 08, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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