



239 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1523-2023(O&M)
DATE OF DECISION: 23.05.2025

BUDH RAMAPPLICANT/APPELLANT

VERSUS

SUBHASHRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Aiman J. Chishti, Advocate
Amicus Curiae, for the applicant/appellant.

SANDEEP MOUDGIL, J

CRM-45637-2023

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 13 days in filing the appeal.

For the reasons mentioned in the application and in view of the submission made by learned counsel for the applicant, the application is allowed and delay of 13 days in filing the appeal is condoned.

Main case

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 09.02.2023 passed by the Judicial Magistrate Ist Class, Hisar, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under Section 138 of the Negotiable Instruments Act (for short ' the Act').



2. Factual Matrix of the case leading to the filing of present petition unfolds as that The applicant/appellant claims that the accused, with whom he shared a friendly relationship, approached him on August 10, 2015, requesting a loan of Rs. 4,50,000 for personal reasons. The applicant/appellant allegedly advanced the loan amount on August 12, 2015, in the presence of a witness named Aad Ram. The accused promised to repay the loan within six months. When the accused failed to repay, the applicant/appellant demanded payment, and the accused issued a cheque (No. 007301) dated September 9, 2017, drawn on Axis Bank Limited, Nohar, Rajasthan, for Rs. 4,50,000/-. However, when the applicant/appellant presented the cheque for encashment with Allahabad Bank, Hisar, it was returned unpaid on September 18, 2017, with the remark "Account closed." Following this, the applicant/appellant served a legal notice dated October 24, 2017, demanding payment of the cheque amount. Since the accused failed to make the payment, the applicant/appellant filed the present complaint.

3. It is contended that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque. It is well settled position in law that once an accused admits his signatures on the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but in spite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 09.02.2023 is liable to be set aside.



4. I have heard learned counsel for the applicant/appellant and gone through the record.

5. Heard.

6. It is clear from Section 138 of the Negotiable Instruments Act that in order to attract the penal provisions in the bouncing of a cheque in Chapter XVII, it is essential that the dishonoured cheque should have been issued in discharge, wholly or in part, or any debt or other liability of the drawer to the payee. The explanation to Section 138 defines the expression debt or other liability as a legally enforceable debt or other liability.

7. From the submissions made by the counsel for the appellant this court can gather that the accused/respondent disputes the loan transaction, alleging that the cheque was handed over to Aad Ram, a third party, for business dealings, not to the applicant/appellant for a loan. The applicant/appellant's cross-examination reveals significant inconsistencies like the applicant/appellant knew the accused through Aad Ram, and there was no direct relationship between them. Further, there is no proof of any receipt or any kind of note to substantiate that the complainant has ever advanced the said amount of Rs. 4,50,000 to the applicant/appellant. Further, this Court would also note that there is contradiction in the complaint's allegations regarding the cheque's issuance date. Also, he does not know that on which bank the cheque was drawn. These inconsistencies cast serious doubt on the applicant/appellant's case. The respondent's version gains credibility due to these discrepancies. Furthermore, the applicant/appellant's failure to examine Aad Ram, a key witness who allegedly witnessed the loan transaction, further weakens his case. Given the lack of evidence and the improbability of lending a large sum without proof, especially between individuals with no prior relationship, the applicant/appellant's story appears highly doubtful. Therefore, this Court finds it challenging to rely on the



applicant/appellant's allegations without concrete evidence to support the loan transaction.

8. It is a settled law as held in "*C.Antony v. K.G.Raghavan Nair, 2002 (4) RCR (Criminal) 750*" that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

9. On perusal of the judgment passed by the trial Court dated 09.02.2023 this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court.

10. Accordingly, the leave to appeal stands declined.

11. Dismissed.

12. Registry is directed to pay the remuneration to the learned Amicus Curiae for the appellant as per Rules.

23.05.2025
anuradha(a)

(SANDEEP MOUDGIL)
JUDGE

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