

2025:PHHC:077488



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

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**CRM-43196-2024 in/and
CRM-A-1397-2024
DECIDED ON: 01.05.2025**

RAJINDER SINGH

.....APPELLANT

VERSUS

GURVINDER SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S, Rangi Advocate
for the Appellant.

SANDEEP MOUDGIL, J

CRM-43196-2024

Application under section 5 of the Limitation Act read with Section 528 BNSS,2023 has been filed praying for condonation of delay of 33 days in filing the present appeal.

Finding the reasons mentioned in the application to be justifiable, the same stands allowed.

Delay condoned.

CRM-A-1397-2024

1. The application under [Section 419\(4\)](#) BNSS has been filed by the appellant seeking leave to appeal against the judgment dated 27.05.2024 passed

by Judicial Magistrate 1st class, Ludhiana (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant under Section 138 of Negotiable Instruments Act 1881(In short “the Act”).

2. Briefly, facts of the case are that respondent-accused being relative of the appellant-complainant borrowed a sum of Rs9,00,000/- as a friendly loan out of which appellant-complainant transferred 4,00,000/- in the account of the respondent-accused and rest was given by withdrawing the bank account. In order to discharge his existing liability towards appellant-complainant, respondent-accused issued three cheques bearing no. 917740,917741, 917742 all dated 01.08.2018 for Rs.3,00,000/- each with an assurance that the said cheques will be honoured on its presentation but when the appellant-complainant presented the cheques for encashment, all three cheques were dishonoured bearing remarks “Funds insufficient”. The appellant-complainant sent a legal notice dated 10.08.2018 but respondent-accused failed to make the payment within stipulated time which compelled the appellant-complainant to file a complaint against the respondent-accused under section 138 of NI Act which has been dismissed by the trial court. Hence, the present appeal.

3. Counsel for the appellant contends that the trial court has erred in passing the judgment while ignoring the fact that CW-1 Rajinder Singh had stepped into the witness box and placed on record various documents sufficient enough to prove the guilt of the respondent-accused.

4. He vehemently argues that an amount of Rs.3,10,000/- returned on 20.11.2015 to the appellant-complainant by the respondent-accused from the account of M/s Uppal Commission Agent is not qua loan amount in question but the said payment was a separate transaction.

5. In addition, it is argued that the trial court has wrongly considered the fact that a transaction took place between the appellant-complainant and Lakhvir Singh but when Lakhvir Singh appeared in witness box and was cross examined as DW-4, he admitted the fact that he has no money transaction with the appellant-complainant.

6. Heard.

7. Having heard the counsel for the appellant and going through the case file, this court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court wherein the appellant has miserably failed to prove beyond reasonable doubt the fact legal debt exists qua the respondent.

8. From the perusal of the judgment by the trial court, it is evident that the appellant-complainant has failed to prove that under what circumstances his daughter, his maternal son in law, his neighbourer received money from the respondent-accused. Further, it is a proven fact that payment of Rs.3,10,000/- was received by the appellant-complainant from respondent-accused in 2015 which means there were some transactions between the respondent-accused and the appellant-complainant prior to 2015 and since these transactions has gone unexplained from the appellant's side, this raises a doubt on the truthfulness of the appellant's version.

9. Moreover, from the perusal of the record in hand it is evident that the appellant-complainant initially did not disclose any transactions that took place prior to 2015 but also failed to explain the transactions even after the respondent-accused had brought them on record.

10. In addition, it has also been rightly observed by the trial court that the person, who does not come to the court with clean hands and conceals material facts from the notice of the court is not entitled to any relief from the court and has placed reliance upon the judgment of the Apex Court in “*ABCD Vs Union of India(2020) 2 SCC 52*” wherein it has been held that concealment of material facts is jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.

11. In the light of above discussion, this court is of the strong view that the appellant has miserably failed to prove beyond reasonable doubt that the cheques in question has been issued in lieu of any legal liability. Hence no fault can be found with the judgment passed by the trial court dated 27.05.2024 and as such the present application under section 419(4) BNSS stands declined as well the appeal, having no merit stands dismissed.

12. Ordered accordingly.

01.05.2025
Anuradha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No