



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

115

CRM-A-918-MA-2014 (O&M)

Date of decision: 12.03.2025

Jai Gopal

....Applicant

Versus

Saurav Garg

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jatinder Singla, Advocate
for the applicant.

Mr. Dinesh Kumar, Advocate
with Ms. Shikha Singla, Advocate
for the respondent.

HARPREET SINGH BRAR J. (Oral)

CRM-9881-2025

The present application is preferred under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') seeking restoration of the present application as the same was dismissed vide order dated 03.03.2025 for want of prosecution.

For the reason mentioned in the application, the same is allowed and the present application is restored to its original number.

CRM-18441-2014

The present application has been preferred under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 1504 days in filing the present application.



For the reasons mentioned in the application, the same is allowed and the delay of 1504 in filing the accompanying application seeking leave to appeal is hereby condoned.

CRM-A-918-MA-2014

1. The present application is preferred under section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking leave to appeal against the judgment dated 06.02.2010 passed by the learned Judicial Magistrate First Class, Sunam whereby the respondent was acquitted in the criminal complaint dated 03.12.2004 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter NI Act).

2. Tersely, the facts of the case are that the respondent borrowed Rs. 25,000/- as a loan from the applicant, as they were previously acquainted with each other. However, in September, 2004, the applicant requested the respondent to return the amount but he cited his financial difficulty to avoid repayment and promised to return the same in the last week of September, 2004. Thereafter, the respondent, in order to discharge the legally enforceable debt, issued a cheque bearing no. 213376 dated 29.09.2004 favouring the applicant for Rs. 25,000/-. On presentation for encashment, the said cheque was dishonoured vide memo dated 11.10.2004 with the remarks "insufficient funds". Consequently, a legal notice was served upon the respondent. Since the respondent failed to clear the dues within the stipulated period, a complaint (supra) was filed against him.

3. The learned trial Court, on assessing all the material available on record, acquitted the respondent vide impugned judgment

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dated 06.02.2010. Aggrieved by the same, the applicant filed the appeal dated 25.02.2010 before the learned Additional Sessions Judge, Sangrur. However, vide judgment dated 08.02.2012 (Annexure P-1) the matter was remanded back to the learned trial Court to decide afresh. The order dated 08.02.2012 (Annexure P-1) was challenged by the respondent before this Court and consequently, the same was set aside vide order dated 06.01.2023 (Annexure P-2) and the matter was remanded to the learned Sessions Court for adjudication on merits. Thereafter, the appeal was dismissed by the learned lower Appellate Court as the same was withdrawn by the appellant, vide order dated 01.08.2013.

4. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that nowhere in the complaint(supra), the legal notice or the examination of the applicant-complainant as CW-1 does the date, month or year of the transaction finds a mention. In fact, the applicant, in his cross-examination as CW-1, has stated that the alleged loan was advanced to the respondent in the month of October, 2004. However, the disputed cheque was issued on 29.09.2004, i.e. a month prior. While the applicant had categorically mentioned that the loan advanced finds mention in his income tax returns, no entry qua the same is shown, as proved by DW1-Vinod Kumar, Senior Tax Assistant. Moreover, DW1-Vinod Kumar has clarified that there is no mention of the respondent as a debtor in the balance sheets. Finally, the applicant has nowhere established the relationship shared by the parties that would form the



basis of issuance of any loan in the first place. As such, the applicant has failed to prove the existence of a legally enforceable debt that would attract the presumption under Section 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. (See: *H.D. Sundara and others vs. State of Karnataka 2023 (9) SCC 581*, *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 2024(2) PLR 43* has held that presumption of innocence gets further 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 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.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

12.03.2025

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No