

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

CRM-A-1574-2019 (O&M)
Date of Decision: 02.08.2023

HARWINDERPAL SINGH

...Applicant/complainant

Versus

RESHAM SINGH

...Respondent/accused

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Balbir Kumar Saini, Advocate
for the applicant.

HARSH BUNGER, J.

The instant application has been filed under Section 378(4) of the Code of Criminal Procedure, seeking grant of leave to appeal against the impugned judgment dated 21.05.2019 passed by learned Judicial Magistrate 1st Class, Moga, whereby complaint filed by the applicant-complainant under Sections 138 read with Section 142 of the Negotiable Instruments Act (for short 'the N.I. Act') has been dismissed and the respondent has been acquitted.

2. Brief facts of the case are that the applicant-complainant filed a complaint under Section 138 read with Section 142 of the N.I. Act, alleging that in the month of November-2015, upon the asking of respondent-accused, the applicant-complainant advanced him the financial assistance of Rs.1,10,000/-.As per the applicant-complainant, when he demanded the above said amount from the respondent-accused, he in order to discharge his aforesaid legal liability, issued a cheque bearing No.172513 dated 20.03.2016 for a sum ofRs.1,10,000/- drawn on his bank

i.e. State Bank of Patiala in favour of the applicant-complainant; however, when the applicant-complainant presented the above said cheque to his banker forencashment, the same was dishonoured by the banker of the respondent-accusedvide Memo dated 18.04.2016 with the remarks “Funds Insufficient”.A legal notice dated 02.05.2016 wasstatedly served upon the respondent-accusedbut despite the receipt of the legal notice, the payment of cheque in questionwas not made within stipulated period.Thereafter, the appellant-complainant filed the complaint under Section 138 read with Section 142 of the N.I. Act beforethe learned trial Court.

3. On the basis of preliminary evidence, respondent-accused was summoned. Subsequently, notice ofaccusation for commission of an offence punishable under Section 138 ofthe N.I. Act was served upon the respondent-accused,to which he pleaded not guilty and claimed trial.

4. The applicant-complainant, in order to prove his case, examined himself as CW1 by way of his duly sworn affidavit in the form of Ex.CW1/A and tendered the following documents :-

<i>Ex.C1</i>	<i>Cheque bearing No.172513 dated 20.03.2016 amounting to Rs.1,10,000/-.</i>
<i>Ex.C2</i>	<i>Memo dated 18.04.2016</i>
<i>Ex.C3</i>	<i>Legal Notice dated 02.05.2016</i>
<i>Ex.C4</i>	<i>Postal Receipt</i>

5. After the closure of evidence of applicant-complainant, statement of the respondent-accused under Section 313 of the Code of Criminal Procedure was recorded wherein he denied all the incriminating circumstances against him and pleaded innocence.

6. In defence evidence, the accused-respondent did not examine any witness and his evidence was closed.

7. The Court below, after hearing the learned counsel for the parties, framed the following point for determination :-

“(A) Whether the complainant has been able to prove beyond reasonable doubt that accused had committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881 ?”

8. The learned trial Court, after appreciating the evidence, dismissed the complaint filed by the applicant-complainant vide judgment dated 21.05.2018 and acquitted the respondent.

9. I have heard learned counsel for the applicant-complainant and gone through the impugned judgment dated 21.05.2018 passed by learned Judicial Magistrate 1st Class, Moga and also the case file.

10. Here, it would be apposite to refer to few judicial pronouncements regarding the scope and parameters, in which, interference can be made in a judgment of acquittal.

11. In ***'Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479'***, Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate

court is competent to reverse the decision of the trial Court depending on the materials placed.”

12. In the case of '*Arulvelu v. State represented by the Public Prosecutor, 2009(4) RCR (Criminal) 638*', the Hon'ble Supreme Court has observed as under:-

“39. In GhureyLal v. State of Uttar Pradesh, (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above :

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*
- 4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

*40. This Court in a recently delivered judgment **State of Rajasthan v. Naresh @ Ram Naresh, 2009(11) SCALE 699** again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused..."*

13. In '*Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748*', Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

14. Coming to the case in hand; the learned trial Court, after appreciating the evidence on record, observed as under:-

“ 12. In his drive to establish the alleged culpability of the accused, complainant predominantly banks upon the presumption so housed under section 139 of the Act. Now it is to be seen that whether in the instant case the accused has been able to rebut this presumption or not and whether the offence against the accused could be proved on record beyond reasonable doubt. In order to prove the guilt of the accused, the complainant had stepped into the witness box as CWI and had reiterated the assertions contained in the complaint in substantial terms and claimed that a sum of Rs.1,10,000 was legally due and recoverable from the accused. In order to discharge his legal liability, accused issued the above said Ex.C1 i.e. Cheque bearing no.172513 dated 20.03.2016 for amount of Rs.1,10,000 drawn on his bank at State bank of Patiala, in favour of the complainant. On the presentation of the

cheque Ex.C1, the same stood dishonoured with the remarks 'Insufficient funds', through above said memo Ex.C2 dated 18.04.2016. Notice of demand dated 02.05.2016 i.e. Ex.C3 was thereafter issued by the complainant upon the accused but the accused failed to pay the demanded amount. The postal receipt had been proved as Ex.C4. Learned counsel for the complainant had argued that the presumption so embodied under section 139 of the Act stood invoked. Consequently it is to be presumed by the Court that the complainant had received the cheque in question for the discharge of liability from the accused.

13. In tandem, the court also recounts the arguments so raised by learned counsel for the accused. It has been argued by Ld. Counsel for accused that in fact, the complainant is running the business of commission agency and the accused used to sell his crops on his commission agency from the year 2007-2010. The complainant had received the three blank signed cheques from the accused at the time of giving advance to the accused. When he requested to return the blank signed cheques, the complainant has assured that the same has been torned. He further argued that the complainant has also filed complaint to the SSP, Moga against the accused in which he admitted that the accused used to sell his crops on his commission agency. Therefore, the complainant initiated the false complaint. There is no legal recoverable amount of complainant against him. The complainant misused the security cheque taken by in lieu of the price of crops taken by the accused from the complainant in advance.

14. Having recounted the entire gamut of the version and the corresponding evidence so adduced by the complainant, the Court engages with the arguments so raised by learned counsel for the accused essentially aimed at dislodging the presumption envisaged under

Section 139 of the Act. On the first count, it was contended that the complaint was infested with towering ambiguity, being vague to an extent that the version of the complainant was rendered implausible as a whole. Further to add to the woes of the complainant, in his cross examination, the complainant had made certain startling and revealing submissions which were thoroughly deleterious to the drive of the complainant and correspondingly reinforced the defence of the accused. Evaluation of the cross examination of the complainant instantly validate the assertions of learned Counsel for the accused that he is running the business of commission agency. Although, the complainant has stated in his cross examination that the accused was not selling his crops on his agency. But, he has also admitted his signature over his statement given in the complaint before the SSP Moga wherein, he has mentioned that he is running the commission agency and accused Resham Singh was selling his crops in his agency. In the year 2015, the accused had taken the advance of Rs.1,10,000/- and in lieu of that, he has issued cheque in question. So, the complainant indirectly admitted the relationship with accused as pleaded by accused in his Statement under Section 313 Cr.P.C. Secondly, the complainant has not even bothered to examine Jagjit Singh and Lakhbir Singh in whose presence the cheque in question was given to the complainant as admitted by him in his cross examination. This aspect had been conveniently avoided by the complainant.

15. The accused has relied upon the various applications moved by the complainant against accused Resham Singh Ex. D7, Jagdev Singh Ex. D8, Janbar Singh Ex. D12 and the report of the inquiry officer on the said application Ex.D11, which clearly shows that the complainant is running the business of

commission agency. The accused Resham Singh alongwith one Jagdev Singh and Janbar Singh used to sell their crops to the complainant. The complainant used to lend money to his customers including the accused. The complainant has nowhere placed on record any licence for money lending.

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In the present case also, the complainant did not mention in his complaint that he is running the business of commission agency which he has admitted in his cross examination. Further, from the perusal of Ex.D7, Ex.D10 and Ex.D11, it is clear that the accused used to sell his crops to the complainant. Further, as admitted by the complainant in his cross examination, that the cheque in question was given in presence of Jagjit Singh and Lakhbir Singh who have not been examined by the complainant.

*16. Having recount the entire gamut of the version and the corresponding evidence so adduced by the complainant, the court engages with the argument so raised by the learned counsel for the accused essentially aimed at dislodging the presumption envisaged under section 139 of the Act. It is settled law that accused can rebut such a presumption by raising a probable defence. The standard proof which is required to rebut the presumption and is "preponderance of probabilities" and inference of preponderance of probability can be drawn, not only from the material on record, but also by reference to the circumstances upon which the accused relies, Further the accused need not to lead positive evidence to rebut the presumption of section 139 rather the same can be done on the basis of cross examination of the witness of the complainant. In this regard, this court is supported by the law laid down by Hon'ble Bombay High Court in case titled as **M/s Kalpana Mines and***

Minerals vs M/s Muneer Enterprises, 2017 (1) RCR (Criminal) 306.

17. The unnatural floundering renders credibility to the version of the accused as raised through suggestions and in his plea under Section 313 of Cr.P.C, that the blank signed cheque of the accused had been misused by the complainant.

18. Hence, after compounding the afore referred deliberations, the Court concludes that in the present case the accused has been able to establish that the cheque Ex. C1 had been misused by the complainant given by the accused to the complainant. The presumption so encased under section 139 of the Act therefore stands dislodged, the version of the complainant being implausible and unconvincing. Complainant fails to prove his case against the accused beyond reasonable doubt and consequently the point for determination is decided against the complainant and the accused is acquitted of the notice served upon him. File be consigned to the record room.”

15. In the instant case, the applicant-complainant filed the complaint under Section 138 of the N.I. Act, on the plea that he had advanced an amount of Rs.1,10,000/- to the respondent-accused in November, 2015 and when the applicant-complainant demanded the said amount from respondent-accused, then in order to discharge his legal liability, he issued a cheque in dispute, which was dishonoured. On the other hand, the respondent-accused had taken a stand that applicant-complainant is running the business of Commission Agency and respondent-accused used to sell his crops on his Commission Agency. The applicant-complainant is stated to have received three blank signed cheques from the respondent-accused, at the time of giving him advance, and when he requested for return of the said blank signed cheques then the applicant-

complainant had assured that the same had been torn. It is the stand of respondent-accused that the applicant-complainant had filed a complaint to the Senior Superintendent of Police, Moga against him, wherein the applicant-complainant had admitted that the respondent-accused used to sell his crops on his Commission Agency. It appears that the applicant-complainant has admitted his signatures over his statement given in the complaint before the Senior Superintendent of Police, Moga; wherein, he had mentioned that he is running the business of Commission Agency and respondent-accused was selling his crops in his Agency. Further, the cheque in dispute was stated to have been given by the complainant in the presence of Jagjit Singh and Lakhbir Singh; however, the said persons were not examined by the complainant. The fact that the complainant is running the business of Commission Agency is reflected from the various applications moved by the applicant-complainant against the respondent-accused-Resham Singh, one Jagdev Singh and one Janbar Singh, i.e. Exhibits D-7, D-8 and D-12, respectively and also the report of the Inquiry Officer (Exhibit D-11) on the said applications. The trial Court has observed that the applicant-complainant has not placed on record any licence for money lending.

16. Considering the totality of circumstances, I find that the learned Court below has given the findings by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted. In no way, the impugned judgment can be held as perverse or against the evidence. The appellant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 21.05.2019 passed by learned Judicial Magistrate 1st Class, Moga.

17. No other argument was raised.

18. In view of the above discussion and also the legal position indicated above, the instant application is bereft of any merit and the same is accordingly dismissed.

19. All pending application/s, if any, shall stand closed.

August 2nd, 2023
Gurpreet/Apurva

(HARSH BUNGER)
JUDGE

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