

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1830-MA of 2017
Date of Decision: 25.11.2019

Praveen Kumar

.....Applicant

Vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Chanderhas Yadav, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

Leave to appeal has been sought against the judgment of acquittal passed by the learned trial Court in a complaint under Section 138 of the Negotiable Instruments Act.

This Court has heard learned counsel for the applicant and with his able assistance gone through the record of the trial Court.

Learned counsel has submitted that in view of presumption under Section 139 of the Negotiable Instruments Act (for short '*Act*'), once signatures on the cheque are not disputed, therefore, it was for the respondent-accused to lead evidence and rebut the presumption available under Section 139 of the Act. Hence, he submits that in absence of evidence, the Court committed an error in dismissing the complaint and acquitting the respondent.

Learned trial Court, on appreciation of evidence, has recorded following findings:-

- 1) Complainant has failed to prove pre-existing liability of

accused towards him. There is no cogent evidence of any particular money transaction between the complainant and accused.

- 2) There is no definite date, month or year, place of advancement of any particular money to the accused so as to show pre-existing liability of the accused in the complaint, legal notice as well as in his affidavit Ex. PW-5/A.
- 3) There is no writing of transaction of money or transaction of any particular amount.
- 4) The complainant had admitted that there is no writing regarding transaction of Rs. 3.00 lacs.
- 5) That if the accused had no relationship with the complainant then why huge transaction.
- 6) No source of availability of amount with complainant to advance money to accused, nor any mode of payment.

Learned counsel for the applicant, although made sincere attempt, however, failed to draw attention of the Court to any misreading or non-reading of substantive evidence.

No doubt, initial presumption is in favour of holder of the cheque in view of Section 139 of the Act, however, the same is rebuttable. It is permissible for the accused to rebut the same on the basis of evidence led by the prosecution.

In the present case, the aforesaid presumption stands rebutted. Reference in this regard can be made to judgment passed by Hon'ble the Supreme Court dealing with rebuttable presumption and reverse onus under

Section 139 of the Act in the case of **Rangappa Vs. Sri Mohan, (2010) 11 SCC 441.**

Paras 3, 26, 27 and 28 of the judgment passed by the Three Judge Bench in Ragappa's case (Supra) are extracted as under:-

“3. The legal question before us pertains to the proper interpretation of Section 139 of the Act which shifts the burden of proof on to the accused in respect of cheque bouncing cases. More specifically, we have been asked to clarify the manner in which this statutory presumption can be rebutted.”

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“26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances there in. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private

parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. *In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. **As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.***

It is apparent from the judgment of the larger Bench that question was answered after thoroughly examining the provisions of Negotiable Instruments Act, 1881.

Learned counsel for the applicant has argued that the cheque in question is proved as Ex. PW-2/B and return memo dated 29.11.2012 as Ex. PW-2/A and Rs. 3.00 lacs was advanced in the last week of September 2011 at the house of accused Ravi Kumar in cash for the purpose of getting SCC Clerk job.

At this stage, it will be relevant to refer two decisions of Supreme Court of India in ***ANSS Raja Shekhar versus Augustus Jeba Ananth, (2019) SCC Online SC 185*** and ***Kishan Rao versus Shankar Gouda (2018) 8 SCC 165*** dealing with presumptions as available under

Sections 118 and 139 of the Act which is permissible for the accused to

point out contradictions/deficiencies in the evidence led by the prosecution to contend that the presumption stands rebutted on preponderance of probabilities. It is not necessary for the accused to lead evidence in defence to rebut the presumption.

Moreover, the trial Court has relied on the judgments titled as *Krishna Janardhan Bhat versus Dattatraya G Hegde, 2008 (1) RCR (Criminal) 695* and *K. Subramani versus K. Damodra Naidu, 2014 (4) RCR (Criminal) 985* wherein it has been held that where the complainant could not prove that he had the money to advance or his financial capacity, the accused deserves acquittal.

In view of the aforesaid, there is no ground to grant leave to appeal.

Dismissed.

(HARNARESH SINGH GILL)
JUDGE

November 25, 2019

Gurpreet

Whether speaking /reasoned : Yes

Whether Reportable : Yes