

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

CRM-A-622-2019 (O&M)

Date of decision : 27.08.2019

Harish Kumar

...Appellant

Versus

Mukesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.K. Bagri, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

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 appellant and with his able assistance gone through the judgment passed by the trial Court.

Learned counsel has submitted that in view of presumption under Section 139 of the Negotiable Instruments 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 Negotiable Instruments 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 concocted false story of friendly loan, whereas in actual, present cheque was given as a blank security cheque to the complainant for grant of agency of biscuits and when the agency was not

given, the complainant misused the security cheque.

- 2) Complainant has not disclosed the date, month and year of advancing friendly loan to the accused.
- 3) Complainant has not mentioned about the diary as stated by him in cross-examination either in the complaint or in his affidavit filed in lieu of examination-in-chief.
- 4) Complainant has admitted that he did not take signatures/thumb impressions of the accused in the said diary.

Learned counsel for the appellant, 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, 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 Negotiable Instruments 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.”

Xxx xxx xxx xxx

“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 therein. 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 appellant while drawing attention of the Court to the judgment of Hon'ble the Supreme Court reported as **(2019) SCC Online SC 389, Rohitbhai Jivanlal Patel Vs. State of Gujarat and another,** has submitted that in view of the presumption under Section 139, it is incumbent upon the accused to produce evidence, failing which presumption under Section 139 would not stand rebutted and hence, judgment of acquittal cannot be sustained.

This Court has carefully read the judgment passed in Rohitbhai's case (Supra). In the aforesaid case, the Magistrate had acquitted whereas High Court had reversed the judgment. 7 cheques of ₹3,00,000/- each were issued on account of repayment of friendly loan. In para 4, Hon'ble the Supreme Court noticed that relevant documentary evidence was produced in the aforesaid case. The aforesaid judgment although, notices judgment passed in Rangappa's case

(Supra) but in the facts of the case, held that presumption under Section 139 does not stands rebutted.

There is another judgment of Hon'ble the Supreme Court in the case of **Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197**. In the aforesaid judgment, the attention of the Court of Hon'ble the Supreme Court was not drawn to the previous larger Bench Judgment in Rangappa's case (Supra). The aforesaid judgment is also in the facts of the case.

At this stage, it will be useful to refer to two more recent decisions of Hon'ble the Supreme Court, first in the case of **ANSS Raja Shekhar Vs. Augustus Jeba Ananth, (2019) SCC Online SC 185** and second in the case of **Kishan Rao Vs. Shankar Gouda, (2018) 8 SCC 165**. In both these judgments, the presumptions as available under Sections 118 and 139 of the Negotiable Instruments Act has been dealt with in detail and after following the view taken by the Larger Bench in Rangappa's case (Supra), it has been held that it 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. In view of the aforesaid, there is no ground to grant leave to appeal.

Dismissed.

27.08.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No