

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1652-MA-2017

Date of Decision: 11.02.2020

Sneh Kaushik

.....Applicant

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Arnav Sood, 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, 1881 (for short 'the Act').

This Court has heard learned counsel for the applicant and with his able assistance gone through the paper book.

Learned counsel has submitted that in view of the presumption under Section 139 of the Act, once the signatures on the cheque are not disputed, 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 found that the complainant is from a decorated Air Force

Officer's family, whereas the accused is from a very humble family and, thus, there cannot be any friendly relationship of the complainant with the accused, who is a mason by profession. It was further found that there was no acknowledgement of the loan or advancement of money; that the complainant had advanced money to about 50 persons and any person into the business of financing would get some documents executed before advancing money; that even the income tax returns filed by the complainant, as Mark-A and Mark-B did not reflect the advancement of loan to the accused; that the table shown by the complainant reflected two figures mentioned as loan amount and even that did not tally with the cheque in question and that the complainant had not placed on record the original of the power of attorney and only photocopy thereof (Ex.C1) was produced.

Learned counsel for the applicant, although made sincere attempt, yet failed to draw attention of the Court to any misreading or misinterpretation 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 the judgment passed by the Hon'ble 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.”

xx xx xx

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 the Act.

Learned counsel has argued that the complainant had proved the case by examining her attorney Sh. S.S. Kaushik as CW1 and had also placed on record the cheque in question as Ex. C3, memo Ex.C4, legal notice Ex.C5 and postal receipt as Ex.C6; that the attorney is the husband of the complainant and a retired Air Force Officer; that the complainant was running the

business of Hire Purchase and Investment and that issuance of cheque Ex.C3 was not denied by the respondent.

It is further argued that the computer generated documents can be taken into consideration, which the trial Court failed to appreciate on the ground that the same did not contain a certificate as per Section 65-B of the Indian Evidence Act.

Learned counsel has relied upon the judgment of the Supreme Court in Rohitbhai Jivanlal Patel Vs. State of Gujarat & Anr., 2019(2) RCR (Criminal) 559, wherein it has been held that there cannot be acquittal on mere ground of 'creation of doubt' because as per the scheme of the Act, mere creation of doubt is not sufficient.

Learned counsel has further relied upon another judgment of the Supreme Court in Criminal Appeal No. 132 of 2020- D.K. Chandel Vs. M/s Wockhardt Ltd. & Anr., decided on 20.01.2020 (arising out of SLP (Crl.) No. 1621 of 2018) to contend that the production of the account books/cash books may be relevant in the Civil Court, but may not be so in the criminal cases filed under Section 138 of the Act, because presumption lies in favour of the holder of the cheque.

Though signatures on the cheque (Ex.C3) is not denied in the present case, yet the complainant has failed to prove any friendly relationship with the accused. No acknowledgement has been placed on record nor in the income tax returns Mark 'A' and Mark 'B', there is any reference of loan when it is an admitted fact that the wife of attorney

(complainant) had been into the business of Hire Purchase and Investment for the last 20 years.

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 185 and Kishan Rao versus Shankar Gouda (2018) 8 SCC 165, dealing with presumptions as available under Sections 118 and 139 of the Act, holding that it is permissible for the accused to point out contradictions/ deficiencies in the evidence led by the prosecution and that it is not necessary for the accused to lead evidence in defence to rebut the presumption.

Moreover, the trial Court has relied on the judgment of the Hon'ble Supreme Court in Krishna Janardhan Bhat versus Dattatraya G Hegde, 2008 (1) RCR (Criminal) 695 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.

Hence, the present application is dismissed.

(HARNARESH SINGH GILL)
JUDGE

February 11, 2020
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No