

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-A-259-MA-2017 (O&M)
Date of Decision:-7.1.2020

Mandeep Singh ... Applicant

Versus

Gurbinder Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. S.K. Arora, Advocate for the applicant.

GURVINDER SINGH GILL, J.(Oral)

1. The applicant seeks leave to appeal so as to challenge judgment dated 3.11.2016 passed by learned Judicial Magistrate 1st Class, Faridkot whereby the respondent Gurbinder Singh has been acquitted in respect of charges framed against him for having committed offence punishable under Section 138 of Negotiable Instruments Act.
2. The learned counsel for the applicant has submitted that in the present case the factum of issuance of cheque is not seriously disputed by the accused and that in these circumstances a presumption ought to have been drawn against the accused that the cheque had been issued in discharge of a legal liability and that the complainant was not required to establish the said fact.
3. I have considered the aforesaid submissions.

4. No doubt a presumption can be drawn against the accused that the cheque in question was issued in discharge of a legal liability especially when the signatures are not disputed. However, such presumption is a rebuttable presumption and can well be rebutted either by way of some evidence led by the accused or if otherwise from other facts and circumstances of the case, the same stands rebutted.
5. In the present case, the complainant during the course of his cross-examination did not state categorically as to when the cheque in question was issued to him or as to when the legal notice was served upon the accused. The relevant discussion from the impugned judgment is reproduced below:

“The bare perusal of the above recorded part of cross-examination of the complainant (CW 1) reveals that the complainant is not sure when the cheque in question was issued to him. He is also not sure when the legal notice was served upon the accused for demanding his loan amount. Most importantly, the complainant had deposed that he had taken money from his father-Surjit Singh for the advancement of loan but he does not know how his father had procured this amount. The complainant had failed to examine said Surjit Singh from whom he had taken such a huge amount for the advancement of loan to the accused to support and corroborate his case. The complainant is not sure about material facts of his case, thus, to base the conviction of the accused-Gurbinder Singh without any cogent evidence is not justifiable.”

6. The learned Trial Court, while noticing the aforesaid fact as well as other inconsistencies in the statement of the complainant, reached at a conclusion that the presumption stands rebutted. This Court does not find any infirmity in the aforesaid findings recorded by the Trial Court and the same are hereby affirmed. Consequently, this Court does not find any ground to grant any

leave to appeal against the impugned judgment. The application as well as appeal, as such, are sans merit and are hereby dismissed.

7.1.2020

pankaj

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No

(Gurvinder Singh Gill)

Judge