

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

CRM-A-180 of 2022 (O&M)

Date of Decision: 19th July, 2022

Kanwardalip Singh through SPA Jasbir Singh

... Applicant.

Versus

Sikander Singh Gill

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Umesh Aggarwal, Advocate for the applicant.

AVNEESH JHINGAN, J.(Oral)

This application is filed for grant of leave to appeal against the judgment of acquittal passed in Complaint Case No. 126/4 dated 10.9.2014 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

The facts as set up by the complainant are that Rs.8,00,000/- were given to the respondent along with passports and certificates for sending him to Canada. The passports and certificates were returned and in order to discharge the liability, the respondent issued cheque bearing no. 040929 dated 20.2.2014 amounting to Rs.4,00,000/-. On presentation, the cheque was dishonoured on 3.3.2014 with the remarks "funds insufficient". After serving legal notice, the complaint was filed.

To substantiate the allegations, the applicant himself deposed, exhibited original cheque, return memo, copy of the legal notice and postal receipt.

The respondent took a defence that payment of Rs.4,50,000/- was made to the applicant in the presence of Gurmeet Singh. Gurmeet Singh in his deposition stated that Rs.4,50,000/- were returned to Jasbir Singh in his presence and Jasbir Singh promised to return cheque No. 040929 of ICICI Bank as he had not brought the original cheque. A receipt regarding the payment made was exhibited.

The applicant in his complaint had not mentioned the fact regarding receiving payment of Rs.4,50,000/- from the respondent. He failed to produce evidence to show any debt or other liability was due on the date of presentation of the cheque.

Learned counsel for the applicant submits that payment of Rs.8,00,000/- was made to the respondent out of which Rs.4,50,000/- were paid, the balance was due. The contention is that the respondent himself never stepped into the witness box but produced witness to support the defence.

There is no dispute on proposition that presumptions under Sections 118 and 139 of the Act are rebuttable and the onus on the accused under the Act is not as strict as is on the prosecution. On rebuttable of presumptions, the onus shifts on the applicant.

The Supreme Court in **Vijay v. Laxman and another, 2013 (2) JT 562** held as under:

“We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 138 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is trite that the courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court”.

In the present case, the respondent was successful in rebutting the presumptions. The fact regarding payment received of Rs.4,50,000/- was withheld by the applicant. The signatures on the receipt are not disputed. Apart from receipt of payment, DW1-Gurmeet Singh supported the defence taken by the respondent that in his presence the payment of Rs.4,50,000/- was made and the applicant promised to return the cheque in question. The applicant failed to discharge the onus casted

upon him (i) to establish that Rs.8,00,000/- were given to the respondent, (iii) that in spite of payment receipt of Rs.4,50,000/-, there was any debt due on the date of presentation of the cheque and (iiii) that the payment received Rs.4,50,000/- was for some other transaction and not with regard to Rs.8,00,000/- in question.

The respondent was successful to rebut the presumption against him by exhibiting the receipt and deposition of Gurmeet Singh. The contention that the respondent himself had not stepped into the witness box does not enhance the case of the applicant.

No case is made out for grant of leave, as no legal or factual error, much less perversity has been pointed out in the impugned judgment. The conclusion arrived at by the trial court is plausible reason.

The application is dismissed.

Since the application for grant of leave to appeal is dismissed on merits, the accompanying application is also disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

19th July, 2022

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Whether reasoned/speaking
Whether reportable

Yes
No