IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-AS-46 of 2019
Date of Decision: 11. 7.2022

Abhilash Kumar

Appellant.

Versus

Nirmal Kumar

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Devansh Khanna, Advocate for the appellant.
Mr. Jivtesh Singh Nagi Advocate (legal aid counsel).

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AVNEESH JHINGAN, J (Oral):

This appeal is directed against the judgment of acquittal dated 2.6.2014 passed by Judicial Magistrate Ist Class, Ludhiana in complaint No. 5/2 of 10.11.2010 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

As per the case set up, the appellant advanced friendly loan of Rs.3,00,000/- to the respondent. For discharging the liability, cheque No. 026503 dated 8.9.2010 amounting to Rs.2,00,000/- drawn on Union Bank of India, Ludhiana was issued. On presentation, the cheque was dishonoured vide memo dated 22.9.2010 with the remarks "funds insufficient".

The appellant to prove his case himself stepped into the witness box, filed an affidavit, tendered cheque return memo, copy of the legal notice and postal receipt.

The respondent took a defence that the appellant was running a chit fund business and used to take one or two blank cheques from each of the members. The cheque given for security was misused. The defence taken by the respondent was accepted. On failure of the appellant to prove existence of a debt or legally enforceable liability on the date of presentation of the cheque, the respondent was acquitted.

Heard learned counsel for the parties and perused the record with their able assistance.

Learned counsel for the appellant submits that the cheque was admittedly signed by the respondent and he failed to adduce evidence to establish that the appellant was engaged in the business of chit fund.

It is settled that presumption under Section 118 and 139 of the Act is rebuttable presumption. The defence taken by the respondent is to be a probable defence. The onus on accused is not as strict as is on the prosecution.

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 **Dashrath Rupsingh Rathod v. State of Maharashtra and another, Criminal Appeal No. 2287 of 2009,** decided on 1.8.2014 the Supreme Court held as under:

> *"31. To sum up:*
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> *(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the*

accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

(ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and

(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

(iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

(v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.

(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

(vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof."

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775,** while dealing with an appeal against acquittal held:

"We are of the opinion that the matter would have to

be examined in the light of the observations of the Hon'ble Supreme Court in Ashok Kumar v. State of Rajasthan, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference."

In **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after considering various judgments laid down parameters where interference can be made in a judgment of acquittal, by observing as under:

"8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re- appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can

> *also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/ report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."*

The respondent took a defence that the security cheque given for chit fund was mis-used. The appellant failed to adduce evidence to discharge the onus that loan was advanced to the respondent. It would not be out of place to mention that in cross examination, the complainant stated that the loan amount was given in the presence of his wife but she was not examined.

The contention that it was not disputed that signatures on the cheque were of the respondent does not enhance the case of the appellant. The presumptions under Sections 118 and 139 of the Act in favour of the cheque holder are only if the cheque is signed by the accused. The respondent was able to rebut the presumption successfully, thereafter, it was for the appellant to establish that the loan was given and a debt was due on the date of presentation of the cheque. After rebuttal of presumption the onus shifted on the appellant and no onus was casted upon the respondent at that stage to establish that the appellant was engaged in the business of chit fund.

Considering the scope of interference in the judgment of acquittal, no case is made out for interference by this court.

The appeal is dismissed.

[AVNEESH JHINGAN]

JUDGE

11.7.2022.

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1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes