

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

**CRM-31265-2018 in/and
CRM-A-1846-MA-2018
Date of Decision: 26th July, 2022**

Lal Singh

... Applicnat

Versus

Ram Mohan

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Prashant Bansal, Advocate for the applicant.

AVNEESH JHINGAN , J.(Oral)

1. This is an application for grant of leave to appeal against judgment of acquittal in Complaint No. 261RT, dated 26th October, 2016 under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'). The application is accompanied by an application for condoning the delay of 88 days.

2. Brief facts as set up by the applicant are that Ram Mohan-respondent borrowed a loan of Rs.3,95,000/-. To discharge the liability, respondent issued a cheque bearing No. 254325, dated 26th July, 2016.

3. On presentation, the cheque was dishonoured on 1st October, 2016 with the remarks 'Account closed'. After serving a legal notice, the complaint was filed. The complainant to prove his case himself stepped into the witness box, filed his affidavit, produced original cheque, legal notice, postal receipt, statement of account of Bhag Singh.

4. The respondent took a defence that he had taken loan from the brother of the complainant. On repaying the amount, the cheques were not returned. The security cheque was misused. To substantiate the defence

taken, he examined DW-1 Ravinder Singh, Account Officer, Malwa Gramin Bank, Shambhu, Head Messenger of State Bank of India, Ambala, and DW-3 Lakhwinder Singh brother of the complainant. An application filed under Section 156(3) Cr.P.C. against the brother of the complainant for not returning the cheques was also placed on record.

5. The Court accepting the defence taken by the accused as probable and on failure of the applicant to prove the loan transaction, acquitted the respondent.

6. Learned counsel for the applicant submits that trial Court erred in acquitting the respondent. The applicant had shown that the amount was withdrawn from the bank. The respondent failed to prove his case that the cheque in question was given to the brother of the applicant. The deposition of Lakhwinder Singh (brother of the applicant) was not with regard to cheque in question but he gave a different cheque number which was given for security.

7. The law is well settled that the presumption under Sections 118 and 139 of the Act are in favour of the holder of cheque but are rebuttable. The onus casted on the accused under Section 138 proceedings is not as strict as on the prosecution.

8. 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”.

9. The defence taken by the accused is to be tested on a reasonably probable defence. In the present case, a specific defence was taken that the security cheques given to the brother of the applicant was misused. To substantiate a complaint filed under Section 156(3) Cr.P.C. was produced. After the rebuttal of the presumptions, the onus shifted upon the applicant.

10. The withdrawal of the amount from the bank nowhere enhance the case of the applicant to substantiate the allegations that the loan of Rs.3,95,000/- was given to the respondent. No document was produced to show a debt or other liability existing on the date of presentation of the cheque.

11. The contention of the learned counsel for the applicant that the respondent failed to discharge onus casted upon him, that a cheque in question was handed over to the brother of the applicant is noted to be rejected. The defence taken by the accused under Section 138 of the Act is to be tested on probability. After rebuttal of presumption, it was for the

applicant to discharge the onus and prove that there was a loan transaction between the applicant and the respondent. It would be not out of place to mention that as per the respondent four cheques were given to brother of the applicant. The reliance on deposition of the brother of the applicant by learned counsel for the applicant that a different cheque was mentioned by him does not enhance the case of applicant.

12. 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.

13. The application is dismissed.

14. Since the main application is dismissed, pending applications if any, are rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

26th July, 2022
Parveen Sharma

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No