

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

CRM-A-245-MA-2018

Date of Decision: 13th July, 2022

Rattan Singh

... Applicant

Versus

Nihal Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sandeep Kotla, 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. 187-II of 2016, under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

2. Brief facts as pleaded by the applicant are that in April, 2015 he advanced loan of Rs.3,00,000/- to the respondent. To discharge the liability, respondent issued a cheque bearing No. 254103 dated 12th December, 2015.

3. On presentation, the cheque was returned on 16th December, 2015 with the remarks 'insufficient funds'. After serving the notice complaint was filed. To support the allegations original cheque, bank memo, legal notice and postal receipt were exhibited.

4. The respondent took a defence that a cheque of Rs.30,000/- issued by him to pay the amount to his servant-Bansi Lal, was misused. The amount was forged, as zero was added in amount column. To support the defence the respondent examined a handwriting expert, who opined that the last digit '0' was in a different ink and added later on.

5. The trial Court accepted the defence. On failure of the complainant to prove the loan transaction and that Rs.3,00,000/- was due on the date of presentation of cheque, the respondent was acquitted.

6. Learned counsel for the applicant submits that it was not disputed that the signatures on the cheque was of respondent. Contention is that no FIR was got registered by respondent for the theft of the cheque.

7. There is no quarrel on the proposition that the presumptions under Sections 118 and 139 of the Act are in favour of the holder of the cheque but are rebuttable. The onus on the accused in proceedings under Section 138 of the Act is not as strict as on the prosecution. The defence has to be reasonably probable. Once the presumptions are rebutted by the accused the onus shifts on the complainant.

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. In the present case, the defence was taken that the amount column of the cheque was forged and to prove it, the handwriting expert was examined. The applicant neither adduced the evidence to prove that the cheque was issued for discharge of debt or other liability nor to explain the reason for the change made in the amount column of the cheque.

10. For conviction under Section 138 of the Act the signatures on cheque by respondent in itself is not enough, the existence of debt or legally enforceable liability is sine qua non. Non-registering of FIR in facts of this case cannot be held to be fatal to the defence of respondent.

11. 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.

12. The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

13th July, 2022

Parveen Sharma

Whether reasoned/speaking
Whether reportable

Yes
Yes