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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A No.2401-MA of 2016
Date of decision : 15.11.2022

Kiran Bala ....Applicant

Versus

Sunita Rani ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.C. Shahpuri, Advocate for the applicant.

Ms. Ishita Jain, Advocate for Mr. Namit Khurana, Advocate for the respondent.

PANKAJ JAIN, J.

Applicant seeks leave to appeal under Section 378(4) Cr.P.C. against judgment dated 2nd of November, 2016 passed by Judicial Magistrate 1st Class, Yamuna Nagar whereby the respondent stands acquitted of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act').

2. Complaint was filed by the applicant claiming that the respondent/accused in discharge of her liability issued a Cheque bearing No.411721 dated 18th of February, 2015 for a sum of Rs.90,000/- drawn on Punjab National Bank Branch, Yamuna Nagar. However, the same was dishonoured when presented with the remarks

'funds insufficient'. Applicant raised demand vide legal notice dated 23rd of February, 2015. However, the respondent having failed to make the payment was liable for punishment for having committed offence punishable under Section 138 of the N.I. Act. There is no dispute w.r.t. the limitation and presentation of the complaint. However, Trial Court dismissed the complaint holding that the version as projected by the complainant was not believable in the absence of any proof w.r.t. loan transaction as claimed.

3. Counsel for the applicant submits that once the respondent had admitted her signatures on the cheque leaf and receipt of notice is also not denied, the Trial Court ought to have raised presumption as enumerated under Section 139 of the N.I. Act. It has been contended that the Trial Court has misdirected itself holding that it was for the applicant/complainant to prove the transaction and thus, the impugned order of acquittal deserves to be reversed.

4. Per contra, counsel for the respondent argues that presumption as contemplated under Section 139 of the N.I. Act is rebuttable. Respondent-accused is well within her rights to rely upon the evidence led by complainant herself to raise a probable defence. Trial Court was right in holding that the case projected by the complainant was suffering from inherent contradictions and was thus liable to be rejected.

5. I have heard counsel for the parties and have gone through records of the case.

6. Law w.r.t. the presumption under Section 139 of the N.I. Act and rebuttable thereof in the light of probable defence is well settled by Three-Judge Bench of Supreme Court in **Rangappa Vs. Sri Mohan, (2010) 11 SCC 441,** wherein it has been held as under :-

> "27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.
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> 28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is

> conceivable that in some cases the accused may not need to adduce evidence of his/her own."

7. Similarly, in the case of **Kishan Rao vs. Shankar Gouda, (2018) 8 SCC 165** relying upon the law laid down in **Rangappa's** case *ibid* it was held that it is not necessary for the accused to lead evidence in defence to rebut the presumption. Same has been reiterated in **ANSS Raja Shekhar vs. Augustus Jeba Ananth, (2019) SCC Online SC 185.**

8. Handing over of the cheque and the signatures thereon is not in dispute. The question that arises before this Court is *'whether the Trial Court has rightly returned the finding that the complainant had miserably failed to prove her case?'*.

9. In the notice served at the behest of the petitioner there is no whisper w.r.t. the liability of the respondent in discharge of which the cheque was issued. In the complaint it has been claimed that the respondent borrowed a sum of Rs.90,000/- and in discharge of the said liability the cheque was issued. There is no detail as to on which date the amount was borrowed. The complainant appeared as CW-1 and tendered into her evidence affidavit Ex. CW-1/A. Just like complaint, her statement tendered vide Ex.CW-1/A is totally bereft of date on which such loan was extended. In her cross-examination she claims that the loan was paid to the respondent by the complainant in

presence of her husband i.e. husband of the complainant. She further submits that the cheque was taken from the accused at the time of extending loan. However, the date thereon was put that of an year thereafter and the same was taken as security. Husband of the complainant appeared as CW-2. He states in his examination-in-chief by way of affidavit CW-2/A that he was present at the time of extension of loan. However, he feigns ignorance w.r.t. filling of cheque. It is in these circumstances the Trial Court held that the presence of husband of the petitioner is highly doubtful and there being no document to prove the loan transaction the version of the applicant/complainant cannot be believed.

10. The scope of the appeal also stands culled out by the Apex Court in **Chandrappa and ors. vs. State of Karnataka, 2007 (2) RCR (Criminal) 92** wherein it was held that :-

> "(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;
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> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;
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> (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the

> nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.
> (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."
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> (emphasis supplied)

11. In the considered opinion of this Court the falsity of the version of the complainant is fatal to her case. The complainant is totally evasive about the details of lending money to the accused in her notice, complaint and her statement. She claims to have lended the money in presence of her husband and obtained cheque at the same time as security to such amount. Husband is totally ignorant about the details of cheque. Thus, this Court does not find that the Trial Court has taken an impossible view which ought not have been taken on the basis of the evidence.

12. As a sequel of the discussion held hereinabove, no fault can be found with the judgment passed by the Trial Court dismissing

the complaint filed by the applicant u/s 138 of the N.I. Act. Consequently, the present application seeking leave to appeal is dismissed.

November 15, 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

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