

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-779-MA-2016

Date of Decision: 22nd August, 2022

Sandeep Kumar

... Applicant

Versus

Jai Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Arun Sharma, Advocate for the applicant.

AVNEESH JHINGAN, J.

This is an application seeking leave to file appeal against acquittal of Jai Singh (respondent) in Criminal Complaint No. 1283 of 2014, titled 'Sandeep Kumar v. Jai Singh', under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

The brief facts are that the petitioner presented cheque bearing No. 096903 dated 6.5.2014 for the sum of Rs.48,720/- drawn on Oriental Bank of Commerce, Govindpuri Branch, Yamuna Nagar signed by the respondent, for encashment. The cheque was dishonoured on 9.5.2014 with the remarks "funds insufficient". After service of notice, the complaint under Section 138 of the Act was filed.

The complainant to substantiate his case himself stepped into the witness box, filed affidavit, adduced the cheque, return memo, legal notice and the postal receipt. In his cross-examination, he stated that he is earning Rs.4,000/- to Rs.5,000/- per month, he had a son and a daughter,

aged 12 years and 8 years, respectively. Further, that the accused was serving in Telephone Exchange and getting salary of Rs.45,000/- per month. He stated that the amount was advanced to the respondent on 6.2.2013 and a document was executed in this regard. Further that the respondent had handed over blank affidavits, ration card and a duly filled cheque.

The respondent took a defence that three signed blank cheques and a blank stamp paper were given to Rameshwar Pathania, a financier by profession. The cheque given to him was mis-used by the complainant.

The defence taken by the respondent was accepted as a probable defence. The applicant failed to prove existence of a debt or liability due on the date of presentation of the cheque. In the complaint, no details of amounts advanced or the period of lending loan were mentioned.

The trial court noted that as per the applicant there was written document executed for advancing loan but no such document was produced. The applicant had no means to advance the loan, he was earning Rs.4,000/- to Rs.5,000/- per month and had two children. The respondent was acquitted vide judgment dated 9.2.2016.

Learned counsel for the applicant submits that the trial court erred in acquitting the respondent as he had not disputed his signatures on the cheque. The contention is that the respondent is a habitual defaulter, he had issued cheques to other persons also, for which litigations were pending. He relies upon the decision of this court in **Manmohan Singh v. Daljit Singh Chadha**, 2019(4) RCR (Criminal) 657.

It is settled position of law that presumptions under Sections

118 and 139 of the Act are in favour of the holder of the cheque. The presumptions are rebuttable. The onus of rebuttal on the respondent is not as heavy as on the prosecution. The defence taken should be probable defence. On rebuttable of the presumptions, the onus shifts on the complainant.

No evidence was adduced by the applicant to establish existing debt or liability on the date of presentation of the cheque. There were no pleading in the complaint that legally enforceable debt was due and as to when the loan was advanced. First time in the cross-examination the applicant stated that the loan was given on 6.2.2013. The best evidence i.e. written document executed for lending loan was not produced.

The contention of learned counsel for the applicant that signatures were not disputed by the respondent is noted to be rejected. Conviction under Section 138 of the Act cannot be solely on the ground that cheque bears the signatures of the respondent. More so, when the trial court noted that the respondent was able to rebut the presumption and the applicant failed to discharge the onus of existing debt or liability on the date of presentation of cheque. Involvement of the respondent in other cases under Section 138 of the Act is of no help to the applicant for discharge of onus casted upon him after rebuttable of the presumptions.

Reliance on the decision of this court in **Manmohan Singh's case (supra)** is mis-placed. The said case was factually different. The plea taken was that the contents of the cheque were filled in a different handwriting. The conviction was upheld considering that the signatures were not disputed and the presumptions under Sections 118 and 139 of the

Act were not rebutted.

No case is made out of legal or factual error, much less perversity in the judgment acquitting the respondent. The view taken by the trial court is plausible view.

No case is made out for grant of leave to appeal.

The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

22nd August, 2022
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Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No