

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A- 1997-MA-2015

Date of Decision: 16th May, 2022

Parveen Mehta

Appellant

Versus

Vishal Joshi

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

AVNEESH JHINGAN, J (Oral):

This is an application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 15.10.2015, acquitting respondent-Vishal Joshi in Complaint Case No. 21265 of 2012.

The brief facts are that cheque bearing NO. 241977 dated 28.6.2012 for a sum of Rs.85,000/- drawn on State Bank of India, Amritsar was presented by complainant-Parveen Mehta (appellant herein). The cheque was returned with the remarks "insufficient funds". A legal notice was served and the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was filed.

The respondent took a defence that security cheque was misused. A loan of Rs.5,000/- was taken from the complainant which was repaid but the cheque was not returned. By filling the amount of Rs.85,000/-, the security cheque was presented in the bank. To substantiate the defence, the respondent relied upon the testimony of the official of Income-tax Department and the income-tax returns filed by the complainant. Further evidence was adduced to show that the complainant was acting as a money lender. He had filed number of complaints under Section 138 of the Act by mis-utilising the security cheques and if the amounts lended by him on loan are compared with his earnings in the income-tax returns, the amount advanced as loan were much higher.

The trial court concluded that the respondent was able to rebut the presumptions under Section 139 of the Act and the complainant failed to discharge the onus that the cheque was issued in discharge of debt or other liability and acquitted the respondent.

Learned counsel for the applicant submits that there is no dispute that the cheque was signed by the respondent. He further submits that the financial capability of the complainant is not to be determined in the proceedings under Section 138 of the Act.

The contentions raised by learned counsel for the applicant do not enhance the case for grant of leave to file appeal. The trial court has not determined the financial capability of the petitioner for lending the loan. The evidence adduced by the respondent was to substantiate the defence taken that the security cheque was misused and that the borrowed amount was Rs.5,000/- which was repaid.

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”.

After successful rebuttal of the presumptions by respondent, the complainant failed to discharge the onus cast upon him that the cheque was issued for discharge of debt or other liability.

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

“31. To sum up:

(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.”

The undisputed signatures of the respondent on the cheque in itself is not sufficient for conviction under Section 138 of the Act. One of the ingredient for succeeding under Section 138 of the Act is that the cheque was issued for discharge of debt or other liability. The respondent was successful in rebutting the presumptions raised against him under Section 139 of the Act and the appellant failed to discharge the onus casted upon him. The view taken by the trial court is a plausible view.

No case is made out for grant of leave to appeal as no legal or factual error, much less perversity, has been pointed out in the impugned order.

The application is dismissed.

[AVNEESH JHINGAN]

JUDGE

16th May, 2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |