

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

CRM-A-576 of 2019

Date of Decision: 18th May, 2022

Anita Sharma

... Applicant

Versus

Tarun Saini and another

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. N. P. Bhardwaj, 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 acquittal of the Tarun Saini (respondent No. 1) vide judgment dated 28.1.2019, in Criminal Complaint No. 1899 of 2016.

As per the case set up by the complainant, respondent No. 1 had taken loan of Rs.1,50,000/- on 15.6.2016 with an assurance to return the same within a month alongwith interest. Cheque bearing No.020961 dated 20.8.2016 for a sum of Rs.50,000/- and cheque bearing No. 020960 dated 9.9.2016 in the sum of Rs.1,00,000/- drawn on State Bank of India were issued by respondent No. 1 in favour of the complainant. On presentation, the cheque No. 020961 was returned with the remarks "insufficient funds". After giving notice, complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was filed.

Respondent No. 1 took a defence that amount of Rs.3,00,000/- was repaid to the complainant on 3.5.2016 in cash and earlier in the year 2013-14, amount of Rs.30,000/- and Rs.21,000/- was transferred to the

account of the complainant as interest. He produced receipt of Rs.3,00,000/- dated 3.5.2016 (Ex.D1) given by the complainant.

As per respondent No. 1 a sum of Rs.2,00,000/- was borrowed in November, 2012 and two cheques were given for security. Thereafter, the borrowed amount was repaid along with interest and it was a case of mis-use of the security cheques.

The trial court acquitted respondent No. 1 considering that respondent No. 1 was able to rebut the presumption under Section 139 of the Act and the complainant failed to produce evidence to substantiate the pleading that the loan was given on 15.6.2016.

Learned counsel for the applicant submits that the receipt produced was for previous transaction, whereas the amount of Rs.1,50,000/- was given by the complainant to respondent No. 1 on 15.6.2016.

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”.

Respondent No. 1 was able to rebut the presumption raised against him under Sections 118 and 139 of the Act. The complainant apart from making a bald statement in cross-examination had not produced any evidence to substantiate advancing of loan on 15.6.2016. She was not able to discharge the onus that the cheques were issued for discharge of debt or other liability. No document or books of account were produced.

Having heard learned counsel for the applicant and perusing the record, no case is made out of legal or factual error, much less perversity in the judgment acquitting respondent No. 1. 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

18th May, 2022
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Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No