

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

CRM-A-901 of 2019 (O&M)

Date of Decision: 30th May, 2022

Ram Singh

...Applicant

Versus

Jaswinder Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Hitesh Pandit, Advocate for the applicant.

AVNEESH JHINGAN , J.(Oral)

This is an application under Section 378(4) Cr.P.C. seeking leave to appeal against acquittal of Jaswinder Singh (respondent) in Complaint No. 18 dated 17.1.2017, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). The application is accompanied by an application for condoning the delay of 16 days.

As per the complainant, the respondent was working in his tent house to supervise the business of tent service. During employment, he had borrowed Rs.3,85,100/- on different dates and had also received amount of rent of the tents, directly from the customers. In November, 2016, the respondent agreed to settle the matter and issued cheque No. 053816 dated 16.11.2016 for Rs.5,00,000/- drawn on State Bank of Patiala, Branch Bardhala. On presentation, the cheque was returned with the remarks “funds insufficient”. After issuance of notice, the complaint was filed.

The complainant in order to prove his case himself stepped into the witness box, produced original cheque, return memo, notice and postal receipt. The officials of the bank were examined with regard to presentation and dis-honour of cheque.

The respondent took a defence that no amount was borrowed from the complainant. A loan of Rs.25,000/- was taken from Vijay Electronics, Khanna owned by Vijay Kumar. A blank cheque given to him was mis-utilised as the complainant and Vijay Kumar were friends. To support his defence, Vijay Kumar was examined as DW1, who stated that Ram Singh (complainant) i.e. (brother-in-law of the respondent) took the file containing signed blank cheque on the pretext of clearing the remaining outstanding loan amount. Further defence taken was that the respondent was partner of the complainant and not the employee.

The trial court took notice of the fact that in the complaint, it was mentioned that Rs.3,85,100/- was paid to the respondent in the presence of witnesses. During cross-examination, the complainant stated that Rs.25,000/- was paid in the presence of his brother-in-law Jagtar Singh and his wife. Neither any witness nor Jagtar Singh or his wife in whose presence the amount was lended were examined. No document or account book was produced to substantiate the entry regarding the amount paid to the respondent.

Learned counsel for the applicant submits that the respondent had not taken the loan from Vijay Kumar. The loan was taken by Jawinder Singh.

The law is well-settled that in proceedings under Section 138

of the Act, the presumption under Sections 118 and 139 of the Act is in favour of the holder of the cheque but the presumption is rebuttable. There is no dispute on the proposition that rebuttable is not to the extent to prove beyond reasonable doubts but has to be on principle of probabilities and preponderance. After rebuttable of the presumption, the onus shifts on the complainant.

In the present case, the respondent successfully rebutted the presumption that the cheque was not issued in the discharge of any debt or other liability. The respondent examined Vijay Kumar to substantiate that a blank cheque given to Vijay Kumar was mis-utilised by the complainant. The complainant thereafter failed to discharge the onus either by examining the witnesses in the presence of whom the amount was paid or by producing the books of account.

Learned counsel for the complainant has failed to show that the issue now being raised was ever raised before the trial court.

No case is made out for interference in the impugned judgment, as no legal or factual error much less perversity has been pointed out.

The application is dismissed.

Since the application for grant of leave to appeal is dismissed on merits, the application for condonation of delay is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

30th May, 2022

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Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No

