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

**CRM-A-397 of 2022 (O&M)
Date of Decision: 2nd August, 2022**

Dinesh Aneja

Applicant

Versus

Dheeraj Kumar @ Jacky

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Pawan Deep Singh, Advocate for the applicant.

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AVNEESH JHINGAN, J (Oral):

This is an application for grant of leave to appeal against acquittal of the respondent vide judgment dated 10.9.2021 in Criminal Complaint No. 2619-II of 2017 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

As per the case set up by the applicant, on 26.11.2016, the respondent took a friendly loan of Rs.1,50,000/- from the applicant. For discharging the liability, cheque bearing No. 767834 dated 29.9.2017 amounting to Rs.1,50,000/- drawn on Canara Bank, Hansi Branch was issued by the respondent. On presentation of the cheque, the same was dishonoured with the remarks “Drawers Signature not as per Mandate” vide memo dated 13.10.2017. After serving the legal notice, the complaint was filed.

The applicant to prove his case produced original cheque, cheque return memo, legal notice, postal receipt and postal acknowledgment.

The respondent took a defence that the lost cheque was found by Anil, relative of the complainant and the said cheque was misused. It was denied that there is legally enforceable liability due. He stated that a complaint regarding loss of cheque, vide application No. 13229041170952 dated 3.7.2017 was given at Police Station at Hansi.

The applicant failed to adduce any evidence to show that loan was advanced to the respondent. The trial court noted the fact that as per the pleadings, the applicant had given friendly loan as he had visiting terms with the respondent, whereas in his cross-examination, the applicant faultered and was not able to withstand the questions asked to prove the friendly relationship.

Learned counsel for the applicant submits that the respondent had not substantiated the defence taken by him. The contention is that the trial court erred in acquitting the respondent as presumptions under Sections 118 and 139 of the Act were in favour of the complainant. Further argument is that no FIR was got registered by the respondent for the lost cheque.

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 a reasonably probable defence. After rebuttable of the presumption, the onus shifts on the applicant.

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".

In the present case, the respondent was able to rebut the presumptions. Thereafter, the complainant failed to produce any evidence to substantiate that debt or legally enforceable liability was due on the presentation of the cheque. He failed to withstand the cross-examination to support the pleading that the friendly loan was advanced as he had visiting terms with the respondent. As per the case set up, the loan was given on the asking of Kiran Devi, Manager in the complainant's company, but she was not examined to prove the transaction.

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 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

2nd August, 2022
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No