

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

CRM-A-2873-2019 (O&M)

Date of Decision: 16th May, 2022

M/s Om Credit and Leasing Company

... Applicant

Versus

Mukesh

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sandeep Goyat, Advocate for the applicant/appellant.

AVNEESH JHINGAN , J.(Oral)

1. This is an application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment of acquittal dated 8th November, 2019, in complaint No. 1651-II of 2017 under Section 138 of the Negotiable Instruments Act.

2. The brief facts are that complainant is a registered partnership firm and is engaged in business of advancing loans. As per the case set up by the complainant, on 16th December, 2015 the loan of Rs. 11,00,000/- was sanctioned to the respondent, the same was to be repaid in eighteen monthly installment of Rs. 22,000/- payable on 15th of every month. The principal amount of Rs. 11,00,000/- was to be repaid alongwith the last interest installment. There was a default in repayment of loan and to discharge the debt cheque no. 420230, dated 29th June, 2017 amounting to Rs. 14,96,000/- drawn on Punjab and Sind bank, Gangwa was issued by the respondent in favour of the complainant. On presentation, the cheque was dishonoured with the

remarks 'insufficient funds'. A legal notice was issued and a complaint under Section 138 of Negotiable Instruments Act, 1881 was filed.

3. The respondent took a defence that he had taken a loan of Rs. 1,50,000/- and had repaid the amount of rupees 1,88,400/-. He produced the receipts of repayment. The contention was that the cheque issued for security was presented and at the time of sanctioning the loan, signatures on the blank paper were taken which were misused for fabricating a document showing a greater amount of loan.

4. In trial it was not disputed that Rs. 1,88,400/- was paid towards the repayment of the loan though the receipts were prior in date to the sanction of loan. No books of accounts and ledger were produced by complainant. The loan sanctioning documents came under cloud. The case of the complainant was that loan of Rs. 11,00,000/- was advanced whereas the pronote and the receipt (Exhibit-C-7) dated 16th December, 2015 were of Rs. 14,96,000/- the amount for which the cheque was presented.

5. The provisions of Income Tax Act, 1961 were taken note of that the complainant being a partnership firm, engaged in money lending was required to advance loan through banking channels. The trial Court concluded that the accused was successful in rebutting the presumption raised against him under Section 139 and the complainant failed to discharge onus that the cheque was issued for discharge of debt or other liabilities, the accused was acquitted.

6. Learned counsel for the applicant submits that there was no dispute that the signatures on the cheque was of the respondent and that the receipts of repayment of loan were prior in time from the sanctioning of

loan.

7. It would be relevant to quote the decisions of Supreme Court in

Vijay v. Laxman and another, 2013 (2) JT 562 SC 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”.

8. In **Dashrath Rupsingh Rathod v. State of 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.”

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

10. The defence taken by the respondent was that loan of Rs.1,50,000/- was repaid but the security cheque and signatures taken on a blank paper were misused for creating a pronote for a higher amount. Coupled with the fact that complainant failed to produce any books of accounts or ledger to substantiate advancing of loan of Rs.11,00,000/-.

There was no material produced that the respondent had any other loan account with the complainant except for one in the dispute. Not an iota of evidence was adduced by the complainant to substantiate that amount of Rs. 11,00,000/- was disbursed as a loan to the respondent and the cheque issued to the complainant was for discharge of debt.

11. No case is made out for grant of leave to appeal, as there is no legal or factual error pointed out in the order.

12. Dismissed.

16th May, 2022
Parveen Sharma

(AVNEESH JHINGAN)
JUDGE

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No