

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

CRM-A-1930-MA-2018 (O&M)

Date of Decision: 13th July, 2022

Vijay Pal

... Applicant

Versus

Surender Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Navmohit Singh, Advocate for the applicant.

AVNEESH JHINGAN , J.(Oral)

1. This is an application under Section 378(4) Cr.P.C. for grant of leave to appeal against acquittal of the respondent in Complaint No. RBT-152 of 2016, dated 13th July, 2016, 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 190 days.

2. Brief facts as pleaded by the applicant are that he advanced a loan of Rs.3,00,000/- to the respondent and for discharge of his liability the respondent, issued a cheque bearing No. 278642, dated 14th June, 2016. On presentation, the cheque was returned vide memo dated 15th June, 2016 with the remarks 'Account closed'. After serving the legal notice, complaint under the Act was filed. The complainant to substantiate the allegations exhibited cheque, cheque return memo, bank statement of respondent, bank statement of the applicant, copy of cheque return memo, legal notice and postal receipt.

3. The respondent took a defence that he had purchased a vehicle from the relative of the applicant namely Naresh Kumar. A blank signed cheque was given as a security to secure the balance consideration of the

transaction, the said cheque was misused by the applicant. The same facts were stated in the reply to the legal notice also. To support the defence taken, DW1 and DW2 deposed in favour of the respondent. The applicant failed to discharge the onus that the cheque issued was for discharge of a debt or other liability. No evidence was adduced for proving the date of advancing loan and no proof of payment made to the respondent.

4. Accepting the defence taken by the respondent as probable and on failure of the applicant to discharge the onus casted upon him, the respondent was acquitted.

5. Learned counsel for the applicant submits that trial court erred in acquitting the respondent, as admittedly the cheque was signed by him.

6. One of the pre-requisite for conviction under Section 138 of the Act is that the cheque must be issued for discharge of debt or other liability.

7. There is no quarrel on the proposition that the presumptions under Sections 118 and 139 of the Act are in favour of the holder of the cheque but are rebuttable. Once the presumptions are rebutted by the accused the onus shifts on the complainant. The onus on the accused in proceeding under Section 138 of the Act is not as strict as is on the prosecution. The defence taken has to be probable

8. 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”.

9. In the present case, no evidence was adduced by the applicant to discharge the onus that the cheque was issued for discharge of debt or other liability. Respondent successfully rebutted the presumption.
10. No case is made out for grant of leave, as no legal or factual error, much less perversity has been pointed out in the impugned judgment. The conclusion arrived at by the trial court is plausible reason.
11. The application is dismissed.
12. Since the application for grant of leave to appeal is dismissed, the application for condonation of delay is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

13th July, 2022
Parveen Sharma

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No