

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

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CRM-A-371-2019 (O&M)
Date of decision: 01.05.2023

Davinder Singh

....Applicant

Versus

Ajay Kamboj

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Satbir Singh Gill, Advocate for the applicant

AMAN CHAUDHARY. J.

1. The present application for leave to appeal has been preferred against the judgment dated 20.11.2018, whereby the respondent was acquitted of the charges leveled under Section 138 of the Negotiable Instruments Act (for short 'NI Act') against him.

2. Briefly put, the facts of the case are that a complaint had been filed by complainant-appellant alleging therein that accused-respondent was running a business namely "Galaxy Agro Foods International, Sirsa", in the course of which he came to the complainant and proposed him to engage in the business of Emu farming. Thereafter, they entered into an agreement dated 02.08.2012 and

as per the contract, the respondent was to supply Emu birds and allegedly, in return was to buy eggs from the appellant. Then on demand for the payment, the accused issued two cheques of Rs. 5 lakh each. On presentation to the bank, one of the cheques, bearing No. 954054, was dishonoured due to insufficient funds. Thereafter, a legal notice was sent, to which the reply was that no payment was made. Hence, the complaint was filed.

3. On notice of accusation under Section 138 of the Act, he appeared and pleaded not guilty. To prove his case, the complainant, himself got examined along with 3 other witnesses. Thereafter, statement of the petitioner under Section 313 of the Code of Criminal Procedure was recorded wherein he denied allegations levelled against him. In defence, no witness was examined and evidence was closed.

4. On meticulous examination of the evidence and hearing the counsel for the parties, the trial Court acquitted the accused-respondent as the complainant could not establish his guilt.

5. Hence, the present application for leave to appeal.

6. Learned counsel contends that the trial Court had erred in acquitting the accused-respondent only on the ground of applicant having failed to prove that the cheque in question was ever issued for discharging of his legal debt and liability. It is admitted fact that an agreement dated 02.08.2012, Exhibit P12, was executed between the parties, regarding sale and purchase of Emu birds and eggs. As per the contract, the rate of Emu eggs was fixed by mutual consent and they were to be bought directly from the complainant's farm. Therefore, it can be

inferred that it was for the purpose of selling eggs to the respondent, that the cheque in question was issued by him for discharging his liability.

7. Heard and perused the file.

8. It would be profitable to refer the judgment of Hon'ble The Supreme Court in case of **Basalingappa vs. Mudibasappa** (2019) 5 SCC 418, wherein the principles governing Sections 118(a) and 139 of NI Act were laid down:

“(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence.”

9. Invoking the provisions of Section 138 of NI Act, pertaining to the dishonour of cheques, the onerous burden of substantiating a legal liability and establishing that the cheque was issued in discharge thereof lies on the complainant. Once this obligation is acknowledged, the onus shifts on to the accused to counter the case of the complainant with compelling evidence. If the same is successfully rebutted by casting doubt on the existence of consideration,

the burden reverts to the complainant, who must substantiate it as an irrefutable fact. Failure to discharge this burden shall render him ineligible for any redress.

10. In the instant case, the complainant could not prove before the trial Court regarding supply of Emu eggs to the accused-respondent and there was no condition that the accused would be bound to purchase the same. The trial Court while acquitting the accused-respondent observed that, "Presumption under Sections 118 & 139 of NI Act are rebuttable presumption and same are rebuttable on preponderance of probabilities. It is a settled principle of law that once the defence is able to rebut the presumptions under the Negotiable Instruments Act, it is for the complainant to prove the case beyond all reasonable doubts. The responsibility of the defence is over by creating a reasonable doubt in the prosecution case and the defence is not required to prove its case beyond all reasonable doubts. Once a reasonable doubt in the prosecution case is created by the defence and the prosecution fails to prove its case beyond all reasonable doubts, the accused becomes entitled to the benefit of doubt and to be acquitted of the acquisition. In cases under Section 138 NI Act it is not required for the accused to prove his case to the hilt. He is only required to raise a probable defence in his favour. Once accused is able to make his version reasonable the burden of discharging the presumption stand discharge and the burden squarely rests upon the complainant to prove his case beyond all doubt."

11. Hon'ble The Supreme Court in **N. Vijayakumar v. State of Tamil Nadu** (2021) 3 SCC 687, wherein it was held thus:

"20.....Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against

conviction. By considering the long line of earlier cases this Court in the judgment in *Chandruppa v. State of Karnataka*, (2007) 4 SCC 415 has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re- appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) xx xx xx

(3) XX XX XX

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

12. Now adverting to that the case in hand, learned trial Court while acquitting the respondent has recorded a finding that the complainant-petitioner had failed to prove the case by leading any cogent evidence regarding the cheque in question was ever issued by the accused-respondent in discharge of his legal debt and liability. There was not even an iota of evidence against the present respondent, which could make out a case of conviction against him. From the close reading of the impugned judgment, no other view is possible.

13. In light of the foregoing facts and circumstances as they stand and the laid down as referred to hereinabove, this Court finds no illegality or

perversity in the impugned judgment passed by the trial Court warranting any interference. As such, the present application seeking leave to appeal is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

May 01, 2023
S.Sharma(syr)

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No