

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

CRM-A-1052-MA of 2017

Date of decision: 19th September, 2023

Mukesh Garg

Applicant

Versus

Nitin Kumar

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Siddharth Gupta, Advocate for the applicant.
Mr. Gurcharan Lal, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. This is an application under Section 378(4) Cr.P.C. seeking leave to appeal against judgment of acquittal in Criminal Complaint No. COMA/1697/2014 under Sections 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. The brief facts, as per the applicant (complainant) are that the respondent had taken loan of Rs.1,00,000/- and for discharging the liability issued two cheques No. 062726 and 062727 dated 21.7.2014 for Rs.50,000/- each drawn on HDFC Bank Ltd. On presentation, the cheques were dis-honoured vide memo dated 4.8.2014 with the remarks "payment stopped by drawer". After issuance of notice, on failure of the respondent to pay the amount, the complaint was filed.

3. The respondent took a defence that the cheque book containing the cheques in question was lost. On-line complaint was made, the print out of which was produced as Ex.D2. The employee of HDFC Bank Amit

Kumar (DW1) was examined who substantiated the application given by the respondent on 7.4.2014 for stopping the payment of the cheques as the cheque book was lost.

4. The complainant to prove the case tendered his own affidavit, produced cheques, return memo, copy of legal notice, postal receipt and statement of account.

5. The court concluded that the respondent was successful in rebutting the presumptions against him. Further that the complainant failed to prove existence of legally enforceable debt on the date of presentation of the cheques. It was taken note of that the date, month and year of advancing the loan were not mentioned, the complainant failed to prove advancing of loan and the respondent was acquitted.

6. Learned counsel for the applicant submits that in the complaint made to the bank the respondent had mentioned that the cheque book was lost and it was not that the signed cheques were lost. It is further argued that the respondent is not disputing the signatures on the cheques. The contention is that no FIR was registered by the respondent against the complainant for mis-use of the cheques.

7. Learned counsel for the respondent defends the judgment of acquittal and submits that the complainant failed to prove the case.

8. The law is well-settled that the presumptions under Sections 118 and 139 of the Act in favour of the holder of the cheque are rebuttable. There is no dispute on the proposition that rebuttal of presumption is not to the extent of proving beyond reasonable doubt but has to be on principle of probabilities and preponderance. On rebuttal of the presumption, the

onus shifts on the complainant.

9. 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”.

10. The contention raised by learned counsel for the applicant that it was not mentioned by the respondent that signed cheques were misplaced and no FIR was registered for mis-use of the cheques does not enhance the case of the applicant. The onus for rebuttal of presumptions is not as heavy as on the prosecution, it has to be on the preponderance of probabilities. The defence taken by the respondent was substantiated by

producing a complaint made to the bank of the cheque book having been lost. It cannot be lost sight of that the complaint was made on 7.4.2014 whereas the cheques were presented in August, 2014, coupled with the fact that the applicant failed to give details of month and year when loan was given. The complainant apart from making a bald statement that he had advanced the loan, miserably failed to prove existence of legally enforceable debt.

11. The contention that the signatures on the cheques are not disputed will in itself be not sufficient for conviction of the respondent. The complainant has to stand on his own legs for discharging the onus, it cannot be discharged by relying on the variations in the cross-examination of the respondent. It would be appropriate to mention that the cheque was returned not only for the reason that payment was stopped but also for material alteration having not been signed by the drawer. The applicant in cross-examination stated that the respondent refused to sign the cutting made on the cheque.

12. The view taken by the court is plausible one. No case is made out for interference in the impugned judgment, as no legal or factual error much less perversity has been pointed out.

13. The application is dismissed.

[AVNEESH JHINGAN]
JUDGE

19th September, 2023
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1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No