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

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**CRM-A-2335-MA-2018
Date of decision : 27.07.2023**

Sukhcharan Singh**..... Applicant**

versus

Rachpal Singh**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Komalpreet Singh, Advocate for
Mr. Amandeep Singh Manaise, Advocate
for the applicant.

PANKAJ JAIN, J. (Oral)

Prayer is for grant of leave to appeal under Section 378(4) of the Code of Criminal Procedure against judgment dated 10.08.2018 passed by JMIC, Guruharsahai, whereby the complaint preferred by the applicant under Section 138 of Negotiable Instruments Act (in short 'the Act') stands dismissed acquitting the respondent.

2. Complaint was preferred by the applicant against the respondent under Section 138 of the Act claiming that he and accused are known to each other. A loan amounting to Rs.3 lakh was extended by the complainant to the accused in the month of December, 2015. In order to discharge his legal liability, the accused issued cheque bearing No.199595 dated 04.01.2016 amounting to Rs.3 lakh drawn on State Bank of India in favour of the complainant. The same was presented by him. It was dishonoured with the remarks 'payment stopped by drawer'.

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3. After trial, the complaint stands dismissed by the trial Court observing as under:-

“xx xx xx

12. Now guaging at the pleadings of the parties and going through the evidence on file, it follows that accused has been successful to defy the allegations levelled against him. Neither in complaint, nor in his affidavit Ex.CW.1/A the complainant has specifically mentioned the date on which he alleges to have lent money to the accused. Another important aspect of this case that is worth taking note of is that though complainant has alleged in his complaint to have given Rs. 3 Lac on demand by accused but in his cross-examination as CW.1, the complainant has submitted that he lent Rs. 2 Lac to accused on 5 December. CW.1 Sukhcharan Singh has also stated in his cross-examination that he had taken Rs.2 Lac from one Iqbal Singh to be given to the accused. Firstly this fact does not find anywhere mentioned either in his pleadings or in examination in chief. Secondly it also shows that the complainant himself was not having any money to be given to the accused when the latter allegedly demanded the money in question. In that case, what was the need to lend money to accused who was residing in some different village, not even remotely related to the complainant, and they were merely acquainted to each other as claimed by complainant. Then importantly in the light of these facts now looking at Mark CX bank statement of complainant and Mark C.Y bank statement of accused, though not exhibited but while taking judicial notice, there is only Rs. 1899/- in the account of complainant at

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particular point of time, whereas looking at the detail of bank statement of accused, there is sufficient amount of about Rs. 3 Lac or so in his account throughout from 31.5.2015 onwards till 13.6.2016. So there seemed no necessity for the accused to demand any money from the complainant.”

3. Learned senior counsel for the applicant does not deny that there is any evidence on record which was not read by the trial Court. However, he submits that once the accused admitted signatures on the cheque leaf, trial Court ought to have convicted him in the light of statutory presumption in favour of the applicant.

4. I have heard counsel for the applicant and have gone through the records of the case.

5. There cannot be any denial to the proposition being canvassed by the counsel representing the applicant that the admission of signatures on the cheque leaf by the accused invokes statutory presumption in favour of the complainant. However, at the same time, it cannot be denied that such presumption in favour of the complainant is rebuttable.

6. Trite it is otherwise that it is not necessary that the accused must lead evidence to rebut the presumption. In order to rebut the presumption, he is required to raise defence based on preponderance of probabilities. Accused may not necessarily lead evidence and can take advantage of the evidence adduced by the complainant. Reference can be made to law laid down by Apex Court in the case of ***Rangappa Vs. Sri Mohan, (2010) 11 SCC 441***, wherein it has been observed as under:-

“27. Section 139 of the Act is an example of a

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reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

Similarly in the case of ***Kishan Rao V. Shankar Gouda, (2018) 8 SCC 165*** relying upon

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the law laid down in **Rangappa's** case ibid it was held that it is not necessary for the accused to lead evidence in defence to rebut the presumption. Same has been reiterated in **ANSS Raja Shekhar V. Augustus Jeba Ananth, (2019) SCC Online SC 185.**”

7. The principles on which the High Court should act in an appeal from an order of acquittal have been well laid down by 04 Judges Bench of Apex Court in the case of **Bansidhar Mohanty vs. State of Orissa, reported as AIR 1955 Supreme Court 585** to hold as under:-

“xx xx xx

4. The principles on which the High Court should act in an appeal from an order of acquittal have been quite clearly laid down by the Privy Council in the case of – **‘Sheo Swarup v. Emperor’, AIR 1934 Privy Council 227 (2)** at pp. 229-230. The same principles have been so often reiterated by this Court that it is hardly necessary to restate them 'in extenso'.

It will be sufficient to refer to the decisions of this Court in - **‘Surajpal Singh v. The State’, AIR 1952 Supreme Court 52; - ‘Puran v. State of Punjab’, AIR 1953 Supreme Court 459 and ‘Narayan Ittiravi v. State of Travancore-Cochin’, AIR 1953 Supreme Court 478.** It is now well settled by the abovementioned decisions that while in an appeal under Section 417, Criminal Procedure Code of the High Court has full power to review the evidence upon which the order of acquittal was founded, nevertheless, in exercising the power conferred by the Code the High Court will give proper weight and consideration to such matters as

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(i) the views of the trial Judge as to the credibility of witnesses; (ii) the presumption of innocence in favour of the accused reinforced by the fact of his acquittal at the trial, (iii) the right of the accused to the benefit of any doubt and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

8. The same was reiterated in the case of ***Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415*** to hold as under:-

“(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, ‘substantial and compelling reasons’, good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(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

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jurisprudence that every person shall be presumed to be innocent unless he 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 possibly on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

9. Further reiterated in the case of State of **‘Uttar Pradesh v. Banne @ Baijnath (2009) 4 SCC 271’**.

10. Facts of the present case when tested on the touchstone of aforesaid law, this Court finds that the following factors weighed with the trial Court to dismiss the complaint:-

(i) The complainant admits that he was not in capacity to lend Rs.3 lakh to the accused and rather borrowed Rs.2 lakh from Iqbal Singh and gave to the accused. The aforesaid fact for the first time came to light during cross-examination of the complainant.

(ii) From the bank statement of the complainant, it is evident that he had balance of Rs.1899/- only, whereas the accused had a sufficient amount of Rs.3 lakh in his account throughout from 31.05.2015 till 13.06.2016.

(iii) It is highly improbable that a person having no means would borrow a sum of Rs.2 lakh to lend it to a third person who himself was having sufficient funds to take care of his needs.

(iv) Iqbal Singh from whom money is stated to have been borrowed by the complainant to further lend the same to the accused was never examined as witness.

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11. In the considered opinion of this Court, the aforesaid factors cumulatively cast a shadow on the story projected by the complainant. The statutory presumptions being not absolute and rebuttable cannot help the case of the complainant which otherwise suffers from contradictions and help probable defence raised by the accused.
12. In view of above, this Court does not find any to exercise appellate jurisdiction to upset the findings recorded by the trial Court.
13. Resultantly, present application seeking leave to appeal is dismissed.

(PANKAJ JAIN)
JUDGE

27.07.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes