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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1222-MA-2015 (O&M)

Date of decision: 20th September, 2023

Gurdeep Singh

...Applicant(s)

Versus

Ranjodh Singh

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. A.K. Saini, Advocate for the applicant.

AVNEESH JHINGAN, J (Oral):

CRM-23669-2015

This application is filed for condonation of delay of 16 days in filing the main application.

For the reasons mentioned in the application, the same is allowed and delay of 16 days in filing the appeal is condoned.

CRM-A-1222-MA-2015

1. The application under Section 378(4) Cr.P.C. is filed against the judgment of acquittal dated 24th April, 2015 in complaint No. 37/4 dated 26th March, 2012.

2. The brief facts as set up by the applicant are that respondent(accused) borrowed an amount of ₹2,00,000/- on 12th December, 2011 as friendly loan bearing interest rate of 2% per month. To discharge the liability the respondent issued cheque bearing No. 877143, dated 20th February, 2012. On presentation, the cheque was dishonored with the remarks 'insufficient funds'. After serving notice and on failure of respondent to pay the amount, the complaint was

3. The respondent took a defence that the respondent used to sell his crops through Bhattian Gill Company and for those transactions his cheque book having 4-5 cheques was taken and when demanded back, it was stated to be misplaced. To substantiate his defence applicant examined Satwant Singh Bhatti and Ranjot Singh to prove that respondent was selling crops through the shop of the complainant. He further produced the application dated 11th February, 2011 (Exhibit C-5) written to the Bank for stopping payment of lost cheque book.

4. The complainant himself stepped into the witness box as CW-1 and produced original cheque Ex. C-1, memo Ex. C-2, notice dated 29th February, 2012 as Ex. C-3, postal receipt Ex. C-4 and acknowledgment Ex. C-5

5. The Court concluded that the respondent was successful in rebutting the presumption and on failure of the complainant to prove legally enforceable debt, the respondent was acquitted.

6. Learned counsel for the applicant submits that there was discrepancy between the defence taken by the complainant and his cross-examination. On the one hand it was stated that the cheques were stolen and on the other hand the contention was that the cheques were misplaced. It is further argued that signatures on the cheques are not disputed. Learned counsel for the applicant relies upon the decision of Supreme Court in **M/s Modi Cements Ltd. v. Kuchil Kumar Nandi, 1998(3) SCC 249.**

7. 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.

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. The defence taken by the respondent was that the cheques were misused and there was no enforceable debt due from him. The defence was substantiated by deposition of Satwant Singh and Ranjot Singh and exhibiting application C-5 dated 11th February, 2011 written to the bank stating that the cheques were lost.

10. On successful rebuttal of presumption by respondent the onus shifted upon the applicant to prove existence of legally enforceable

applicant had given the loan at the rate of 24% per annum. No documents, books of account or evidence was adduced for proving advancing of loan. The variation in the defence taken and the cross-examination of the respondent shall not enhance the case of the applicant. The applicant has to stand on his own legs to prove the case for conviction under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act'). The applicant stopped payment as the cheques were lost. It would be appropriate to note that the application was filed with the bank on 11th February, 2011 and the transaction in question allegedly took place on 12th December, 2011.

11. The reliance of the learned counsel for the applicant on *M/s Modi Cements Ltd. (supra)* is of no help. Therein it was held that dishonoring of cheque on stopping of payment by drawee shall not preclude action under Section 138 of the Act. In the present case, the respondent was not acquitted on the ground that 'stop the payment of cheque' shall not come within the ambit of Section 138 of the Act.

12. There is no factual or legal error, much less perversity, in the impugned judgment. The view taken by the trial court is plausible one. No case is made out for grant of leave to appeal.

13. The application for grant of leave to appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

20th September, 2023
Parveen Sharma

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