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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-807-MA-2016 (O&M)
Date of decision: 25th September, 2023

Ajaib Singh

...Applicant(s)

Versus

Ajmer Singh

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Puja Chopra, Advocate for the applicant.

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AVNEESH JHINGAN, J (Oral):

1. The application under Section 378(4) Cr.P.C. is filed against the judgment of acquittal dated 29th February, 2016 under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act').

2. The brief facts as set up are that the respondent(accused) issued a cheque bearing No. 943682 dated 19th January, 2007 for a sum of ` 8,50,000/- drawn on Punjab & Sind Bank, Ferozepur City for repayment of the loan advanced by the applicant. On presentation, the cheque was returned vide memo dated 23rd January, 2007 with the remarks 'insufficient funds'. The defence taken by the respondent that one of the blank signed cheque given to Gurjit singh has been misused. Gurjit Singh wanted to marry a near relative of the respondent and he assured the respondent for getting him a petrol pump allotted, for that purpose he got blank cheque signed. Further that on gaining the knowledge that Gurjit Singh was already married respondent refused to get his relative married to him. He was carrying a grudge and forged the

cheque. The handwriting expert gave an opinion that the body of the cheque was filled by Gurjit Singh. On failure of the applicant to prove the case, the respondent was acquitted.

3. Learned counsel for the applicant submits that the signature on the cheque was not disputed by the respondent. She further submits that the applicant was able to show the financial capacity to lend loan of ` 8,50,000/-.

4. Heard learned counsel for the applicant and perused the record.

5. The law is well settled that the presumption is in favour of the holder of the cheque but the presumption is rebuttable. Further there is no quarrel on the proposition that the onus for rebuttal of the presumption is not as heavy as on the prosecution. It has to be on the basis of preponderance and probability.

6. The contention that the signatures on the cheque were not disputed and he had a financial capacity to advance a loan of ` 8,50,000/- does not enhance the case. The respondent was able to substantiate the defence taken by examining the handwriting expert. The applicant stated that in cross-examination he was not aware of the date or month in which the loan was advanced. Further applicant to prove his financial capacity stated that after selling land he had deposited Rs. 8,50,000/- in his bank account prior to the loan transaction but at the same time he admitted he had purchased another land for Rs. 6,00,000/-. The applicant failed to prove that there was a legally enforceable debt on the date of presentation of cheque. He failed to adduce evidence of advancing loan to the respondent.

7. The view taken is a plausible one. There is no legal or factual error much less perversity in the impugned judgment.

8. The application is dismissed.

9. Since the main application has been dismissed, pending application if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

25th September, 2023
Parveen Sharma

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