

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

**CRM-A-2025-MA of 2015
Date of decision: 4th September, 2023**

Gursewak Singh

Applicant

Versus

Amardeep Singh

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Surinder Garg, Advocate for the applicant.

AVNEESH JHINGAN, J (Oral):

1. This is an application under Section 378(4) Cr.P.C. seeking leave to appeal against acquittal of Amardeep Singh (respondent) in Complaint No. 388-2 dated 9.10.2013 , under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').
2. The brief facts are that the applicant filed a complaint on dis-honouring of cheque No. 603588 dated 26.8.2013 amounting to Rs.3,00,000/- drawn on State Bank of Patiala, Gidderbaha. As per the applicant, the respondent borrowed a sum of Rs.3,00,000/-. The cheque issued for repayment of loan was dishonoured on presentation with remarks “account closed”. After serving notice, the complaint was filed.
3. The respondent took a defence that his cheque book was lost, an application to this effect was moved to the banker in 2012 and account closed. The application was exhibited as D1. He denied that the amount was borrowed and stated that it was a case of mis-use of lost cheque.

4. As per the deposition of the applicant, the loan advanced was entered in books of accounts but he had not brought the account books. During the cross-examination, the applicant stated that the cheque in question was issued in lieu of an earlier cheque for which a complaint under Section 138 of the Act was filed, however, he failed to substantiate it. Further in cross-examination, it was stated that his income-tax return depicted outstanding loan from the respondent but in spite of seeking opportunities, the returns were not produced.

5. The court acquitted the respondent by concluding that the respondent was successful in rebutting the presumptions under Sections 118 and 139 of the Act and the applicant failed to prove the case.

6. Learned counsel for the applicant submits that the respondent has not denied his signatures and he issued the cheque in 2013 knowing well that the account was closed in 2012.

7. The contentions raised by learned counsel for the applicant lacks merit. 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 substantiated by Ex.D1 and deposition of SMO of the bank. In the complaint it was pleaded that the respondent had borrowed a sum of Rs.3,00,000/-, the applicant faultered in cross-examination and stated that the cheque was given in lieu of an earlier cheque for which the proceedings under Section 138 of the Act were initiated but this contention was not substantiated. After rebuttal of presumption the onus shifted on the complainant, on failure to prove the case the respondent was rightly acquitted.

10. No case is made out for interference in the impugned judgment, as no legal or factual error much less perversity has been pointed out.

11. The application is dismissed.

[AVNEESH JHINGAN]
JUDGE

4th September, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |