

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

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CRM-A-678-2019 (O&M)
Date of Decision: 14.02.2023

BHIM SINGH

... Appellant

VERSUS

SURESH CHAND

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishwajeet, Advocate for
 Mr. Vikram Singh, Advocate
 for the appellant.

SANDEEP MOUDGIL, J. (ORAL)

By filing the present appeal, under Section 378(4) Cr.P.C. the appellant has assailed the judgment dated 10.01.2019, passed by the Judicial Magistrate Ist Class, Karnal, dismissing the complaint and acquitting the respondent-accused therein of the notice of accusation served upon him under Section 138 of the Negotiable Instruments Act (for short 'the Act').

It is contended that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is contended that the complainant has duly and fully proved the ingredients of Section 138 of the N.I. Act, 1881, but the learned trial Court failed to appreciate the evidence led by the complainant on record and returned a finding of acquittal while dismissing the complaint in question. The presumption under Section 139 of the N.I. Act, 1881 is very strong in favour of the complainant in the present case, but still the impugned judgment has been passed ignoring all well settled legal positions and as such, the

judgment suffers from grave injustice, illegality and perversity. Hence, the same is liable to be set aside.

Heard.

I have perused the impugned judgment carefully and have also gone meticulously through the findings recorded by the trial Court. Upon perusal of the same, I do not find any perversity or illegality therein. From the perusal of judgment, it is revealed that the accused is a Commission Agent and complainant is a farmer, who used to borrow money from the accused after putting his signatures in the ledger book of the accused. The accused has duly proved the copies of his ledger book as Ex.D1 and Ex.D2 before the trial Court. Not only this, the complainant has also admitted his signatures on the said documents. In the flow of such circumstances, the complainant had approached the accused (Commission Agent) for borrowing a sum of Rs.1,10,000/-. Pursuant to the same, the accused issued a cheque in favour of the complainant. In lieu of the same, the accused demanded a security cheque from the complainant, which the complainant refused. Resultantly, the accused got the payment of cheque in question stopped. Furthermore, it is the specific contention of the complainant he had had lent a sum of Rs.6,50,000/- to the accused on different dates through RTGS, however, it was the same amount which was borrowed by the complainant from the accused after putting his signatures in the ledger book of the accused. As such, it was return of money and not the lending of money to the accused. The complainant has even not disclosed the dates of RTGS allegedly done by him. Hence, the trial Court has rightly held that the complainant has filed a false complaint against the accused and has further rightly acquitted the accused. It is well settled law that presumption under Section 118 and 139 of the N.I. At, 1881 is that the cheque was issued in discharge of legal liability. This presumption is rebuttable. Standard of proof required for rebutting such presumption is not as

high as that of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. In the present case also, the respondent-accused has raised a probable defence, which is duly supported by documentary evidence. Hence, it can safely be held that the impugned judgment does not suffer from any illegality or perversity.

It is a settled law as held in **C. Antony v. K.G. Raghavan Nair, 2002(4) RCR(Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

On perusal of the judgment passed by the trial Court dated 10.01.2019, this Court is of the considered view that the said judgment well reasoned and is based upon proper appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or requiring any interference by this Court. The accused-respondent has been duly able to rebut the presumption under Section 139 of the N.I. Act, 1881 and as such, she has rightly been acquitted of the notice of accusation served upon her.

Accordingly, the leave to appeal stands declined.

Dismissed.

14.02.2023

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No