

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

211.

**CRM-A No.1036 of 2019 (O&M)
Date of Decision:20.11.2023**

Gurnam Singh

... Applicant/Appellant

Versus

Inderjit Singh and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Avtar S. Khinda, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application has been preferred by the applicant-appellant under Section 378 (4) of the Criminal Procedure Code, 1973 against the judgment dated 07.03.2019 passed by the Sub Divisional Judicial Magistrate, Sultanpur Lodhi whereby the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) was dismissed and respondent No.1-accused was acquitted.

2. In brief, the facts are that the petitioner-complainant had made a complaint against respondent No.1-accused under Section 138 of the NI Act on the ground that the respondent No.1-accused was in need of money and approached the petitioner for a loan. The petitioner gave a loan of ₹1,80,000/- to the accused and in order to discharge his debt liability, the accused issued a cheque No.785003 dated 29.05.2014 for ₹1,80,000/- drawn over Oriental Bank of Commerce, Branch Sultanpur Lodhi, District Kapurthala with a promise of its encashment on presentation to the petitioner. However, on presentation, the said cheque was dishonoured with remarks 'funds insufficient' vide memo dated 31.05.2014.

Thereafter, the complainant issued a legal notice dated 05.06.2014 through registered post demanding the cheque amount, which was not responded to by respondent No.1 nor the amount of cheque was paid. Hence, the complaint was filed by the petitioner.

3. The petitioner adduced preliminary evidence on the basis of which the respondent No.1 was summoned to face trial for an offence punishable under Section 138 of the NI Act and on his appearance, he was served with the notice of accusation under the aforesaid Section, to which he pleaded not guilty and claimed trial. Statement of the respondent No.1-accused was recorded under Section 313 Cr.P.C. and all incriminating evidence was put to him to which he pleaded false implication and claimed innocence. After appreciating the entire evidence on record, the learned trial Court acquitted the respondent No.1.

4. Learned counsel for the petitioner contends that the judgment passed by the trial Court is based on conjectures and surmises. The trial Court has gravely erred in acquitting respondent No.1-accused when he himself had issued the cheque in question in admission to his legal liability. The presumption is in favour of the holder of the cheque which was not rebutted by the respondent No.1 and therefore, he was liable to be convicted.

5. Having heard the counsel appearing for the applicant-appellant and after perusing the record of the case with his able assistance, this Court finds no merit in the arguments raised by him.

6. The NI Act creates a presumption in favour of the prosecution in terms of Section 118 and 139. The same are reproduced as under:

“Section 118: Presumptions as to negotiable instruments.

Until the contrary is proved, the following presumptions shall be made:--

(a) of consideration:-- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been

accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

Section 139: Presumption in favour of holder.

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

7. It is no longer *res integra* that these presumptions are of a rebuttable nature. While, the onus to prove the guilt of the accused rests on the prosecution, once the facts required to form the basis of these presumptions in law exist, the Court is duty bound to draw the conclusion as stipulated by the statute. However, the accused is not barred from presenting evidence in his defence. The accused is only required to raise a probable defence casting a doubt on the existence of consideration which he can do by adducing direct evidence, circumstantial evidence or even on the basis of presumptions of law or fact. Furthermore, if he can explain the circumstances that would indicate his innocence, it is not mandatory for the accused to adduce evidence as the material available on record itself can be looked at from a new perspective. Thereafter, the burden shifts back to the prosecution to reply to and negate the rebuttal made by the accused. The standard of proof in an offence under the NI Act is that of civil proceedings i.e. preponderance of probabilities. Since the burden of proof on the accused is not as heavy as the prosecution, he is not required to disprove the entire prosecution case.

8. A two Judge bench of the Hon'ble Supreme Court in ***M.S. Narayana Menon alial Mani v. State of Kerala and Anr 2006(6) SCC 39***, speaking through Justice S.B. Sinha, observed as follows:

“45. In Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 Supreme Court 1316], Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether

burden of proof in terms of Section 118 had been discharged or not, relevant evidence cannot be permitted to be withheld. If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced might have gone unfavourable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the Act stating :

"...Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

9. There is no material placed on record with respect to the date and time to indicate when the petitioner had advanced the loan to respondent No.1-accused and that the cheque given by the respondent No.1 was in lieu of discharge of his legal debt liability. In his cross-examination, he mentioned various instances where he advanced loan to different persons and on their default in returning the loan amount, complaints under Section 138 of the NI Act were filed against them. The petitioner cannot carry on the business of advancing loans unless he gets himself registered as a money lender under the Punjab Registration of Money Lenders Act, 1938 and obtains a licence. It was also stated by the petitioner in his cross-examination that respondent No.1 had been taking goods from his shop and he used to issue cheque for the amount of said goods. Therefore, the petitioner has miserably failed to prove that the respondent No.1-accused was under a debt liability towards the petitioner, which he failed to discharge and the cheque issued by him was in lieu of discharge of said liability.

10. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional

advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See *H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415*). A Division Bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others* passed in CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched and fortified in favour of the accused after earning acquittal from the trial Court.

11. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined. Resultantly, the instant application stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 20, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No