

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

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CRM-A-533-2022 (O&M)
Date of Decision: 13.02.2023

SUKHJEET SINGH

... Appellant

VERSUS

RAJESH KUMAR

... Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aman Godara, 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 19.04.2022, passed by the Judicial Magistrate Ist Class, Kurukshetra, 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 trial Court has based its finding of acquittal on the fact of non-proving of financial capacity and non-execution of any receipt of writing and certain other things. The complainant has stated in his evidence that the amount of Rs.7,00,000/- was ready in cash at his home being the earnings from his poultry farm. But to the dismay of this Court, no documentary proof has been placed on record by the complainant with regard to his poultry farm or the income generated from it. Mere, ocular version is not sufficient and cannot take the place of cogent proof. Secondly, it is also highly improbable that a prudent man like the complainant would extend such a huge loan of Rs.7,00,000/- without any paper work i.e. receipt or writing. Even no person has been cited by the complainant, in whose presence the alleged amount was given. All the allegations of the complainant are completely in air and have no force at all. In the considered opinion of this Court, respondent-accused has raised a probable defence which is worthy credence, especially when, the complainant failed to prove any legally enforceable debt. 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. 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 19.04.2022, 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.

13.02.2023

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(SANDEEP MOUDGIL)
JUDGE

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