

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

CRM-A-508 of 2023

Date of decision: 12th September, 2023

Manjit Singh

Applicant

Versus

Ashok Kumar Shukla

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rahul Sharma-I, 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 judgment of acquittal in Criminal Complaint No. 12312 of 2017, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. The brief facts as per the complainant (applicant herein) are that during February, 2013 to March, 2015 respondent (Ashok Kumar Shukla) borrowed a loan of Rs.14,50,000/- from the applicant. For repayment of part of loan, the respondent issued a cheque bearing No. 645843 dated 3.7.2017 amounting to Rs.3,00,000/-. On presentation the cheque was dishonoured with the remarks "funds insufficient". After issuance of legal notice, the complaint was filed.

3. The respondent took defence that loan of Rs.3,00,000/- was

borrowed from the applicant in the year 2012 and the cheque was given as security. The loan was repaid from July, 2016 to December, 2016 but the applicant did not return the cheque stating that it was mis-placed and later misused it. Second defence was that the respondent had never taken loan of Rs.14,50,000/- from the applicant, rather the amount credited in his account in the years 2014-15 was to be utilised by one Vakil Thakur. Further that the respondent and his wife had never issued three cheques of Rs.4,50,000/, Rs.6,00,000/- and Rs.4,00,000/-. The respondent to substantiate the defence examined Mandeep, Clerk in Punjab National Bank, Branch Sector 16-D, Chandigarh. He deposed that the cheque in question was the first cheque from cheque book No. FBP/645831 issued on 18.8.2011 and thereafter two cheque books were issued on 14.6.2013 and 24.6.2014. Nutan Thakur widow of Vakil Thakur was examined as DW1. She supported the defence of the respondent stating that the amount credited in the account of the respondent was utilised by her deceased husband who cleared the loan during his life time.

4. The applicant himself stepped into the witness box and stated that the cheque was issued by the respondent to clear the outstanding installments in pursuance to the compromise dated 16.7.2016. He substantiated the filing of complaint with the police and the statements made before SSP, Mohali for clearing the loan amount of Rs.14,50,000/- in monthly instalments of Rs.50,000/-.

5. Learned counsel for the applicant submits that signature on the cheque was not disputed. The statement recorded in the office of SSP, Mohali is relied upon to contend that the respondent had to make payment

of Rs.50,000/- per month to clear the loan of Rs.14,50,000/-.

6. 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.

7. 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”.

8. It was considered that as per the applicant, loan of Rs.14,50,000/- was taken during February, 2013 to March, 2015. In order to clear the loan, three cheques amounting to Rs.4,50,000/-, Rs.6,00,000/- and Rs.4,00,000/- were issued, one by wife of the respondent and two by the respondent, on presentation the cheques were dishonoured. On a complaint made to the police, the matter was compromised on 16.7.2016 and thereafter respondent paid Rs.50,000/- per month only till December, 2016. To clear the six outstanding installments, the cheque in question was issued. The court concluded that the respondent was successful in rebutting the presumptions under Sections 118 and 139 of the Act. It was noted that the cheque in question issued to the applicant on 3.7.2017 was from a cheque book issued on 18.8.2011, whereas thereafter two more cheque books were issued subsequently. The applicant faltered in the cross examination. As per the version in the complaint the cheque in question was handed over on 13.7.2017 before the police authorities, whereas in cross-examination the applicant stated that the cheque was handed over in May, 2016 in the market of Naya Gaon i.e. before making the police complaint. The version of the applicant was found doubtful. The deposition of Nutan Thakur-DW1 fortified the defence of the respondent that the amount credited in the account of the respondent was for Vakil Thakur and that she had made a statement to this effect before the police authorities during the enquiry of the complaint. The non-production of three cheques allegedly issued by the wife of the respondent and the respondent created a dent on the case set up by the applicant. It was considered that neither complaint under Section 138 of the Act was filed nor notice was

given on dishonouring of the three cheques. Further that in the legal notice issued on dishonouring of the cheque in question, there was neither mention of the total loan given to the respondent nor of issuance three cheques. The respondent was acquitted on failure of the applicant to prove the case.

9. It is undisputed that the respondent was successful in rebutting the presumptions and the onus shifted upon the applicant to prove existence of legally enforceable debt on the date of presentation of cheque. The reliance on the statement dated 16.7.2016 does not enhance the case for proving the default in payment of monthly installments and that the amount of Rs.3,00,000/- was due from the respondent on the date of presentation of the cheque. The issuance of cheque in 2017 from a cheque book issued in 2011, more-so when two cheque books were issued to the respondent thereafter make the version of the applicant doubtful.

10. It would not be out of place to mention that there was material variation between the contents of the complaint and cross-examination of the applicant vis-a-vis the date and the place of handing over the cheque. In cross-examination, it was stated that the cheque was handed over in May, 2016 i.e. prior to making of police complaint in pursuance to which the alleged statement dated 16.7.2016 was recorded. This variation is fatal as in May, 2016 there was no default of monthly installment to be paid in pursuance to the statement.

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

12. The application is dismissed.

[AVNEESH JHINGAN]
JUDGE

12th September, 2023
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1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No