

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

CRM-A-2536 of 2019

Date of decision: 11th September, 2023

Paramjit Kaur

Applicant

Versus

Kuldeep Singh

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajat Dogra, 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 in Criminal Case No. 58 dated 10.4.2018 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. The brief facts are that Paramjit Kaur (applicant) filed a complaint under Section 138 of the Act on dishonour of cheque bearing No. 065987 dated 9.3.2018 amounting to Rs.70,000/- drawn on State Bank of Patiala (Now SBI) Branch Jaitu. The case set up by the applicant was that the respondent had borrowed loan of Rs.70,000/- and to clear the debt, the cheque in question was issued.

3. The complainant in order to prove her case, tendered her affidavit, original cheque, memo of dishonour, legal notice, postal receipt and certified copy of account statement.

4. The respondent took a defence that the cheque handed over to Jarnail Singh as security was mis-used. To substantiate the defence, DW1-Navdeep Singh deposed that the respondent had taken a shop on rent from Jarnail Singh, he received a blank cheque as security. Son of the complainant was a regular visitor of Jarnail Singh. The respondent had

lodged criminal proceeding against Jarnail Singh which was pending in the court. The cheque in question was handed over to the son of the complainant by Jarnail Singh and it was mis-used.

5. The court concluded that the respondent was successful in rebutting presumptions under Sections 118 and 139 of the Act. On failure of the complainant to prove existence of legally enforceable debt on the date of presentation of cheque, the respondent was acquitted, hence the present application.

6. Learned counsel for the applicant submits that the court erred in acquitting the respondent. He further submits that DW1-Navdeep Singh in cross-examination admitted that there was no written rent agreement between Jarnail Singh and the respondent. The contention is that signatures of the respondent on the cheque are not disputed.

7. 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 presumption is rebuttable not to the extent to prove beyond reasonable doubt but has to be on principle of probabilities and preponderance. After 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. In the present case, the defence taken by the respondent of mis-use of cheque was substantiated by DW1-Navdeep Singh. On shifting of onus the complainant miserably failed to produce evidence with regard to advancing of loan and existence of legally enforceable debt on the date of presentation of the cheque. The case set up was that friendly loan was advanced to respondent by her but the complainant faltered in cross-examination and admitted that the respondent was not known to her and they had no previous dealing.
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. The view taken by the court below is plausible.
11. The application is dismissed.

[AVNEESH JHINGAN]
JUDGE

11th September, 2023
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1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No