

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

**CRM-A No.1994 of 2019 (O&M)
Date of Decision : 12.12.2023**

Sukhwinder Singh

.....Applicant

versus

Munish Kumar

.....Respondent

CORAM : HON'BLE MR JUSTICE PANKAJ JAIN

Present : Mr. H.K. Brinda, Advocate for the applicant.

PANKAJ JAIN, J.

Applicant seeks leave to appeal against the judgment passed by Judicial Magistrate 1st Class, Rupnagar dismissing the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act') acquitting the respondent.

2. Applicant filed complaint under Section 138 of the N.I. Act claiming that the respondent issued him cheque bearing No.670885 for an amounting to Rs.10.00 lacs on 29th of December, 2014 in discharge of his legal liability. However, when presented the same was dishonoured vide memo dated 30th of December, 2014 for the reason, “funds insufficient”. After serving statutory notice of demand the complaint was filed within prescribed period of limitation. Accused was summoned to face trial.

3. Counsel for the applicant while assailing the judgment

passed by the Trial Court submits that the Trial Court erred in dismissing the complaint merely on surmises and conjectures. He submits that the complaint has been dismissed merely on the ground that the complainant has not been able to spell as to when the loan of Rs.10.00 lac was advanced by him to the accused, what was the purpose of advancing the loan and no receipt was executed at the time the loan was advanced. He submits that the Trial Court ought not have gone into these nitty-gritty. It has been contended that once the accused admitted his signatures on the cheque leaf presumption under Sections 118 and 139 of the N.I. Act ought to have been invoked to convict the respondent/accused.

4. I have heard counsel for the applicant and have gone through records of the case.

5. Law w.r.t. offence punishable under Section 138 of the N.I. Act is well settled is well settled by Three-Judge Bench of Supreme Court in **Rangappa Vs. Sri Mohan, (2010) 11 SCC 441**, wherein it has been held as under:-

“27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138

can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

6. Similarly in the case of **Kishan Rao V. Shankar Gouda, (2018) 8 SCC 165** relying upon the law laid down in **Rangappa's** case *ibid* it was held that it is not necessary for the accused to lead evidence in defence to rebut the presumption. Same has been reiterated in **ANSS Raja Shekhar V. Augustus Jeba Ananth, (2019) SCC Online SC 185.**

7. There is no dispute w.r.t. the proposition that once the accused admits his signatures on the cheque leaf presumption under Sections 118 and 139 of the N.I. Act gets invoked. However, the presumption is rebuttable. The accused is entitled to rebut the same by

leading cogent evidence or by relying upon the evidence led by the complainant.

8. In the present case, complainant when came in witness-box admitted that he is an Income Tax Assessee. He further stated that the factum of advancing of loan at his behest to the accused is reflected in his Income Tax Return. He was given opportunity to produce Income Tax Returns. Admittedly, he failed to do so. It is in these circumstances, the Trial Court found that the complaint preferred by the petitioner/complainant suffers from inherent weakness. Material piece of evidence has been withheld by the complainant despite having been granted opportunity and as such adverse inference needs to be drawn against the complainant in view of Section 114 of the Evidence Act.

9. In view of above, this Court does not find any reason to interfere in the impugned judgment which seems to be more probable view.

10. Consequently, the instant application seeking leave to appeal is dismissed.

December 12, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No