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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-1942-MA-2016
Date of decision : 13.05.2024

Vinod Kumar Applicant

versus

Madan Mohan Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sushil Bhardwaj, Advocate
for the applicant.

PANKAJ JAIN, J. (Oral)

1. Applicant seeks leave to appeal against the judgment dated 01.09.2016 passed by Judicial Magistrate 1st Class, Karnal 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 a complaint under Section 138 of the N.I. Act claiming that the respondent issued him cheque bearing No.636104 for an amounting to Rs.2 lacs on 8th August 2006 in discharge of his legal liability. However, when presented the same was dishonored vide memo dated 27th August 2006 and 2nd September 2006 for the reason, “funds insufficient”. After serving statutory notice of demand, the complaint was filed within the prescribed period of limitation. Accused was summoned to face trial.

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3. Counsel for 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 mention the date when the cheque was issued and what was his relationship with the accused. 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. The principles on which this should act in an appeal from an order of acquittal have been well laid down by 04 Judges Bench of Apex Court in the case of ***Bansidhar Mohanty vs. State of Orissa, reported as AIR 1955 Supreme Court 585*** to hold as under:-

“xx xx xx

4. The principles on which the High Court should act in an appeal from an order of acquittal have been quite clearly laid down by the Privy Council in the case of – ‘Sheo Swarup v. Emperor’, AIR 1934 Privy Council 227 (2) at pp. 229-230. The same principles have been so often reiterated by this Court that it is hardly necessary to restate them 'in extenso'. It will be sufficient to refer to the decisions of this Court in - 'Surajpal Singh v. The

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State', AIR 1952 Supreme Court 52; - 'Puran v. State of Punjab', AIR 1953 Supreme Court 459 and 'Narayan Ittiravi v. State of Travancore-Cochin', AIR 1953 Supreme Court 478. It is now well settled by the abovementioned decisions that while in an appeal under Section 417, Criminal Procedure Code of the High Court has full power to review the evidence upon which the order of acquittal was founded, nevertheless, in exercising the power conferred by the Code the High Court will give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of witnesses; (ii) the presumption of innocence in favour of the accused reinforced by the fact of his acquittal at the trial, (iii) the right of the accused to the benefit of any doubt and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

6. 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

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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.

7. 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

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**SC 185.**

8. 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 inherent contradictions/weakness in the evidence led by the complainant.

9. Further reiterated in the case of the State of ***'Uttar Pradesh v. Banne @ Baijnath (2009) 4 SCC 271.***

10. Facts of the present case when tested on the touchstone of aforesaid law, this Court finds that the following factors weighed with the trial Court to dismiss the complaint:-

(i) The complainant has failed to establish his relationship with the accused. He claims to have lent the amount to the accused on him being a relative of Gulshan. However, for reasons best known to him, Gulshan was never examined which brought major contradictions in his version. Thus vital link informs of Gulshan has gone missing.

(ii) The complainant during his trial mentions the cheque to be post dated and a security cheque, but the perusal of the complaint reveals that the said fact is not pleaded case of the complainant.

11. In the considered opinion of this Court, the aforesaid factors cumulatively cast a shadow on the story projected by the complainant. The statutory presumptions being not absolute and rebuttable cannot help the case of the complainant which otherwise suffers from contradictions and help probable defence raised by the

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accused.

12. In view of above, this Court does not find any ground to exercise appellate jurisdiction to upset the findings recorded by the trial Court.

13. Resultantly, present application seeking leave to appeal is dismissed.

(PANKAJ JAIN)
JUDGE

13.05.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No