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

**227** **CRM-A-916-MA-2014**
**DATE OF DECISION: 11.09.2024**

**JANGSHER SINGH ...APPLICANT/APPELLANT**

**Versus**

**BHIM SINGH ... RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Sahil Khunger, Advocate for the appellant(s).
Ms. Lalita Kashyap, Advocate for
Mr. Namit Khurana, Advocate for the respondent.

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**SANDEEP MOUDGIL, J (ORAL)**

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 07.04.2014, passed by the Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhari dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under Section 138 of the Negotiable Instruments Act (for short ' the Act').

2. Factual Matrix of the case leading to the filing of present petition unfolds as that the appellant had given a friendly loan to the respondent for an amount of Rs. 3,00,000/- and in the discharge of his said legal liability, the respondent/accused had issued a cheque bearing No. 971223 dated 20.6.2012 for Rs. 3,00,000/- drawn on State Bank of India, Jagadhri, District Yamuna Nagar in favour of the present appellant. When the said cheque was presented by appellant in his bank, the same was returned back as dishonoured vide Memo dated

23.6.2012 with remarks "FUNDS INSUFFICIENT". Accordingly, the appellant also served a legal notice to the present respondent on 11.7.2012 through his counsel and thereafter, within the stipulated time period, the present appellant filed a complaint under Section 138 of Negotiable Instruments Act, before the Judicial Magistrate 1st Class, Yamuna Nagar on 11.8.2012 and summons were issued to the accused/respondent by the Trial Court, the trial was proceeded in the matter and eventually vide the impugned Judgment dated 7.4.2014, the respondent/accused was acquitted by the Trial Court. Hence, the present appeal has been filed by the appellant.

3. Learned counsel for the appellant contends 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 further contended that the trial Court gave the benefit of acquittal to the respondent-accused on the ground that there are certain discrepancies in the version of the complainant, which culminated into being the defence of accused probable and trustworthy. Such an erroneous finding deserves to be set aside as the trial Court has utterly failed to appreciate the well proven oral as well documentary evidence of the complainant. It is his further contention that it has wrongly been held that the presumption under Section 139 of the NI Act was rebutted successfully by the respondent as the complainant had failed to prove the loan transaction whereas this fact has been proved by the appellant by way of Ex-26 which clearly shows that an amount of Rs. 3 lakhs was withdrawan by the appellant from his bank account on 17.01.2021 and the same was given to the

respondent. The Trial Court further erred in concluding that it cannot be believed that the loan was advanced to the respondent as the appellant has not charged any interest on the loan amount as well as no receipt was ever taken by the complainant while giving such a huge amount whereas the Court has ignored the fact that both the parties were known to each other prior to the advancement of loan, therefore, no interest was charged and no receipt was taken.

4. He further asserts that the Trial Court has wrongly believed the defence given by the respondent to the effect that the respondent had given the cheque in question to the appellant in blank since the appellant and the brother of the appellant Mulla Singh had promised to give their land on lease but the same was not done and the appellant misused the cheque whereas no evidence was led by the respondent regarding this fact, since the cheque in question was issued by the respondent in discharge of his friendly loan given by the appellant.

5. It is further assertion of counsel for the appellant that the Trial Court has completely ignored the basic provisions of the NI Act which provides the presumption in favour of the appellant under Section 139 of NI Act and mere denial of the respondent would not shift the burden of proof upon the appellant. In fact, the appellant has proved all the basic ingredients of NI Act such as the signatures on cheque has been admitted by the respondent, the legal notice as stipulated by the Act has been validly proved, moreso, despite admission of signatures, no proof of stealing the cheque has been adduced by the respondent.

6. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but in spite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 07.04.2014 is liable to be set aside.

7. I have heard learned counsel for the applicant/appellant and gone through the record.

8. From perusal of the judgment, it is apparent that the complainant/appellant is a person who has taken loans from the bank and in his cross-examination he stated that he cannot tell the total amount of loan taken by him, thus when he himself is a person under financial debt, it cannot be believed that he would have given loan to respondent and that too without interest or taking any receipt.

9. Furthermore, neither in the complaint nor in his examination in chief the complainant has alleged that the liability was a legal liability and the appellant in his cross examination, the complainant has stated that he does not know even the year in which the loan was advanced and the purpose for which it was given.

10. The main bone of contention of the appellant that the amount disputed i.e., 3 lacs was advanced to the accused/respondent in presence of a person from his own village namely Suresh Kumar however, he has not been examined by the complainant/appellant to prove his stance.

11. This court finds no reason to disbelieve the conclusion made by the Trial Court that in the present case neither the date of demand of loan, nor date of giving of loan was mentioned by the complainant; no receipt was taken; no interest was charged for the loan amount and there is no absolutely no documentary or other material on record to prove the loan transaction between the parties.

12. Furthermore, the appellant has failed to prove that the cheque was issued against the legally enforceable debt and moreover the defence put by the accused is supported by substantial proof and the accused has been able to raise a cogent doubt regarding the truthfulness of the issuance of the cheque in question and once the presumption under sections 118(A) and 139 of the Act of 1881 stands rebutted by the accused. The burden is upon the complainant to prove that the cheque was issued by the accused in discharge of any existing legal liability which the appellant/complainant has failed to prove.

13. 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.

14. On perusal of the judgment passed by the trial Court dated 07.04.2014, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the

parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

15. Accordingly, the leave to appeal stands declined.

16. Dismissed.

**(SANDEEP MOUDGIL)**
**JUDGE**

**11.09.2024**
*anuradha*

*Whether speaking/reasoned* *Yes/No*
*Whether reportable* *Yes/No*