

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

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2024:PHHC:031795

CRM-A-54-2020 (O&M)

Date of decision: March 4th, 2024

Sher Singh

.....Applicant

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vinay Puri, Advocate
for the applicant.

MANJARI NEHRU KAUL, J.

CRM-98-2020

Prayer in this application is for condonation of delay of 33 days in filing the application for grant of special leave to appeal.

For the reasons mentioned in the application, the same is allowed.

Delay of 33 days in filing the application stands condoned.

CRM-A-54-2020

The applicant-complainant (hereinafter referred to as 'complainant') is impugning the judgment dated 17.01.2019 passed by the learned Judicial Magistrate 1st Class, Amritsar, whereby respondent No.2-accused (hereinafter referred to as 'accused') has been acquitted of the charges framed against him in a criminal complaint i.e. CIS No.NACT/5270 of 2017 filed under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. As per the allegations levelled in the complaint, the complainant, advanced a loan to the accused in the sum of ₹6 lakh. The accused, in discharge of his legal liability, issued a cheque bearing No.014970 dated 01.12.2016 (hereinafter referred to as 'cheque in

question') for ₹6 lakh drawn on Axis Bank, Amritsar, in favour of the complainant. However, on presentation of the cheque by the complainant, it was returned vide return memo dated 08.12.2016 with the remarks "Drawer Signatures Differ". The complainant thereafter sent a legal notice dated 03.01.2017, however, the accused failed to make the payment to the complainant, leading to the filing of the complaint in question.

3. After considering the material on record and the evidence led by the parties, the learned trial Court acquitted the accused by holding that the complainant had failed to prove the case against the accused beyond shadow of reasonable doubt.

4. Learned counsel appearing for the complainant has reiterated the allegations levelled in the complaint in question by asserting that the complainant had extended a loan of ₹6 lakh to the accused, however, the learned trial Court failed to appreciate that the accused had not only admitted to his signatures on the cheque in question but in the circumstances, a presumption under Sections 118 and 139 of the Act also arise in his favour. Furthermore, a flimsy ground had been raised by the accused that the cheque in question had been given as security, which in turn had been misused by the complainant. Learned counsel for the complainant has argued that it could not be digested that had been so the accused would not have asked the complainant to return the cheque in question and instead would have chosen not to even file any complaint against the complainant with respect to the alleged misuse of the cheque. He has further submitted that merely because the factum of a land deal between the parties had not been mentioned in the complaint in question, it

could not be said that the accused had no legal liability to pay the complainant, more so when the accused had not been able to rebut the presumption under Section 139 of the Act by leading any cogent evidence in support of his defence.

5. I have heard learned counsel for the applicant and perused the relevant material on record.

6. It has not been disputed, rather it stands admitted by the complainant that as per agreement, his wife and sons sold 28 *kanals* and 2 *marlas* of land to the accused in lieu of which the complainant received two blank cheques from the accused for an amount of ₹5 lakh and ₹6 lakh respectively. The agreement stipulated that the cheques would be encashed only after the accused obtained possession of the land. However, due to some urgent financial need, the complainant encashed one cheque in the sum of ₹5 lakh before handing over the possession of the land to the accused. The factum of the execution of the sale deed between the parties as well as the transactions between them pursuant thereto, are conspicuously missing in the instant complaint. Furthermore, the complainant failed to prove that the accused had issued the cheques to discharge a legal debt/liability as he could not even, strangely, recall the details of the loan allegedly advanced to the accused.

7. No doubt, even a blank cheque would attract presumption under Section 138 of the Act, however, the said presumption is rebuttable on preponderance of probabilities, which the accused has successfully rebutted in the instant case.

8. As a sequel to the above, this Court concurs with the findings recorded by the trial Court that the complainant failed to prove his case against the accused beyond shadow of reasonable doubt.
9. The application stands dismissed.

March 4th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No