



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

259

CRM-A-1768-2023

DATE OF DECISION: 10.12.2024

SURESH CHAND

.....PETITIONER

Versus

GULAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manoj Kaushik, Advocate
for the petitioner.

Mr. B.S. Virk, DAG, Haryana

SANDEEP MOUDGIL, J

1. The present appeal has been preferred before this court against the impugned judgment dated 15.09.2023 passed by the SDJM, Hodal, Palwal whereby the accused-respondent namely Gulab Singh was acquitted from charges framed against him.

2. The brief facts of the case are that the accused borrowed a sum of Rs 1,00,000/- as a friendly loan against the same the cheques bearing No. 189804 dated 11. 11. 2018 in tune to Rs 1,00,000/- in the name of the complainant against account number 08221530011497 drawn on HDFC Bank, Sohna. The same got dishonour upon presentation vide bank return memo dated 03.01.2019 with remarks "Account Closed" subsequently legal notice dated 25.01.2019 was issued to the accused, despite service of legal notice, the



accused made no payment to the complainant resulting in filing of the instant complaint.

3. Contentions

On behalf of the Appellant

The counsel for the appellant-complainant contends that in the trial court no evidence was lead qua the defence taken by the accused, whereby the signatures on the cheque and the issuance of the cheque in the favour of the the appellant complainant itself was denied by the accused.

He further argues that vide bank memo it was duly proved that the cheque belonged to the bank account of the accused-respondent, thereafter the burden of proof laid upon the accused to lead cogent scientific evidence to rebut the presumption under section 118 and 139 of the Negotiable Instruments Act (N.I. Act), but even though many opportunities were granted no evidence was led by the accused-respondent whereafter the defence evidence was closed by order dated 14.09.2023.

The counsel vehemently argues that the Trial Court has not used a judicial mind and has erroneously granted acquittal to the accused-respondent without appreciating the fact that the accused-respondent issued the cheque in lieu of legally dischargeable liability qua the loan amount and mere oral denial would not legally exonerate the accused-respondent of his legally dischargeable liability especially when the same carries a presumption under section 139 of the N.I. Act. Also, argues that the accused-respondent neither examined himself nor examined any other witness in order to legally



rebut the presumption under section 118 and 139 of N.I. Act.

4. Analysis

This court on perusal of the Trail Court record is of the view that as the signatures on the cheque in dispute itself could not be ascertained to be that of the accused-respondent namely Gulab Singh, therefore the appellant-complainant could not discharge his burden of proof, also the appellant-complainant failed in discharging his burden to prove the guilt of the accused-respondent beyond the reasonable doubt, both of which are essential for the conviction of the accused-respondent. Therefore this court finds no cogent reason to interfere with the findings of acquittal of the trail court vide judgment dated 15.09.2023.

The degrees and the concept of probability is not one to be able to be measured in any mathematical unit, thus it can't be enumerated as to how many such units constitute proof beyond reasonable doubt, therefore there is an element of subjectivity while evaluating the quantum of proof and also while evaluating the variable degrees of probabilities. Forensic probability lastly rests on the stark deliberation, of the experienced institution of the Judge.

This court deems it necessary to also clarify upon the presumption under Section 118 and 139 of the N.I. Act which shall be in favour of the Complainant, wherein the issuance of the cheque is not disputed, therein it has to be presumed that the cheques in question had been issued towards some legally enforceable debt. Needless to say, such a presumption



can be rebutted by the accused by raising a probable defence. The law on this proposition is well-settled and for the same, a reference can be made to the decision of Hon'ble Apex Court in case of "**Basalingappa v. Mudibasappa**" (2019) 5 SCC 418, whereby it was held as under:

"25. We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence..."

This court's view of non-interference with the judgment dated 15.09.2023 passed by the SDJM, Hodal, Palwal is affirmed from the aforementioned discussion whereby in the present case the signatures on the cheque in question are itself disputed and from the the perusal of the record the court is enlightened that the signatures upon the cheque itself were not proved to be that of the accused by the complainant therefore the making the



execution of cheque inadmissible as a cogent piece of evidence therefore the favour of presumption under section 118 and 139 of the N.I. Act cannot be granted to the complainant.

5. **Decision**

From the discussion made herein above this court is of the considered view that there is no need to interfere with the reasoned Judgment dated 15.09.2023 passed by the SDJM, Hodal, Palwal.

According the present appeal stands dismissed, in aforesaid terms.

10.12.2024
meenu/anuradha

(Sandeep Moudgil)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No