

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

221

CRM-A-10870-MA-2018

Date of Decision: 13.02.2024

AMRIK SINGH

... APPLICANT/APPELLANT

VERSUS

DEEPAK KUMAR

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Sarabjeet Singh, Advocate, for the applicant/appellant.

SANDEEP MOUDGIL, J

1. By filing the present application, under Section 378(4) Cr.P.C. the applicant/appellant has assailed the judgment dated 30.10.2018, passed by the Judicial Magistrate Ist Class, Amritsar, dismissing the complaint and acquitting the respondent-accused therein of the notice of accusation served upon him under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. Factual matrix leading to the filing of present petition folds as :-

That about years back accused met with complainant and accused told to complainant that he is sending various youths to abroad. The complainant shows his interest to send his son Gurpreet Singh and one of his relatives namely Harmesh Singh resident of Attari, Tehsil and Distt Amritsar to abroad for this purpose, accused received a total sum of Rs.15,00,000/- from the complainant and in order to partially discharge his legal debt and liability the accused had issued the cheque in question in favour of complainant but the cheque of the accused was dishonoured by the banker of accused with the remarks "Account Closed" and the accused did not make the payment even despite service of legal notice making it evident that the case against the accused has been duly proved as such, the accused may be punished under section 138 of Negotiable Instruments Act.

3. It is contended by the complainant 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 averred by the learned counsel for the petitioner that the complainant has duly and fully proved the ingredients of Section 138 of the N.I. Act, 1881, but the learned trial Court failed to appreciate the evidence led by the complainant on record and returned a finding of acquittal while dismissing the complaint in question. The presumption under Section 139 of the N.I. Act, 1881 is very strong in favour of the complainant in the present case, but still the impugned judgment has been passed ignoring all well settled legal positions and as such, the judgment suffers from grave injustice, illegality and perversity. Hence, the same is liable to be set aside.

4. Heard.

5. I have perused the impugned judgment carefully and have also gone meticulously through the findings recorded by the trial Court wherein it has been specifically pleaded by the respondent that the cheque in question was issued by him to one Mangat Ram in connection with some other dealing which he has not complied with and one FIR 152 dated 26.12.2016 under section 420,34 of IPC already stood registered against him for Forgery and cheating. Moreover, the complainant lacked to mention date, month and year when he has given the amount to the accused as well as failed to produce any authenticated record to demonstrate that he has made payment of Rs15.00 lakh to the accused/respondent because no receipt or pronote has been issued by him. In the considered opinion of this Court, respondent-accused has raised a probable defence which is worthy credence, especially when, the complainant failed to prove any legally enforceable debt.

5. The Apex Court in case of **Rangappa Vs. Sri Mohan 2010(4) Law Herald (SC) 2296** has held that when an accused has to rebut the presumption raised under section 139 of Negotiable Instruments Act the standard of proof for doing so is that of 'preponderance of probabilities'. So, the contention raised by the the accused have to be examined in light of aforementioned presumptions in favour of the complainant and law regarding standard of proof laid down by the Apex Court in aforementioned judgment. Standard of proof required for rebutting such presumption is not as high as that of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. In the present case also, the respondent-accused has raised a probable defence.

6 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.

7 On perusal of the judgment passed by the trial Court dated 30.10.2018, this Court is of the considered view that the same is well reasoned and based upon proper appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or requiring any interference by this Court. In the considered opinion of this Court, respondent-accused has raised a probable defence which is worthy credence, especially when the complainant failed to prove any legally enforceable debt and as such the accused-respondent has been duly able to rebut the presumption under Section 139 of the N.I. Act, 1881 and therefore has rightly been acquitted of the notice of accusation served upon her.

8. Accordingly, the leave to appeal filed under section 378(4) Cr.P.C stands declined.

9. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

13.02.2024
Sham

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No