



2024:DHC:6028



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th AUGUST, 2024

IN THE MATTER OF:

+ **CRL.L.P. 250/2024 & CRL.M.A. 14698/2024**

RAJPAL SINGH

.....Petitioner

Through: Mr. Shambhu Nath Singh & Mr.
Sagar Chhabra, Advs.

versus

ISHPREET KAUR

.....Respondent

Through: Appearance not given

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Aggrieved by the Judgment dated 15.12.2023 passed by the learned Metropolitan Magistrate dismissing Ct. Case No.27317/2018 filed by the Petitioner herein under Section 138 of the NI Act, the Complainant/Petitioner has approached this Court praying for special leave to appeal under Section 378(4) CrPC to challenge the said judgment.

2. The facts in brief leading to the filing of the instant petition are as follows:-

- a) It is stated that the family of the Respondent are tenants of the premises owned by the Petitioner herein with whom they had cordial family relationship for more than 10 years.
- b) It is stated that the Respondent used to borrow money from the Petitioner for her business and investment purposes and used to return the same to the Petitioner in time.



2024:DHC:6028



- c) It is stated that Respondent borrowed different amounts from the Petitioner between 2017 and 2018 and the Petitioner was extending her the financial support. It is stated that the Respondent started delaying in repayment of the amount. It is stated that in November, 2017, a meeting was held between the Petitioner and the Respondent. The entire loan amount was calculated and it was found that a sum of Rs.2 lakh was due and payable by the Respondent.
- d) For repayment of the said loan amount, the Respondent issued a post dated cheque being Cheque No. 011568 dated 15.05.2018 for the sum of Rs.2 lakh drawn on Federal Bank, Rajouri Garden Branch, Delhi to the Petitioner with an assurance of its clearance upon presentation.
- e) It is stated that the said cheque was presented for encashment on 15.05.2018 but the cheque was returned with the remarks '*payment stopped by Drawer*' vide return memo dated 25.05.2018.
- f) It is stated that a legal notice dated 18.06.2018 was sent by the Petitioner to the Respondent for the payment of the cheque amount within 15 days from the receipt of the legal notice.
- g) It is stated that since the payment was not made within the time stipulated, the Petitioner herein filed a complaint under Section 138 of the Negotiable Instruments Act.
3. It is stated that the Petitioner issued a legal demand notice dated 18.06.2018 which was received by the Respondent on 27.06.2018. It is stated that despite receiving the legal notice, the Respondent failed to make the payment and the complaint under Section 138 of the NI Act has been filed by the Petitioner.
4. *Per contra*, the stand of the Respondent is that she and her family



2024:DHC:6028



were tenants in the property of the Petitioner. It is stated that the Respondent had given blank signed cheques to the Petitioner which were given as security for the payment of rent. These cheques have been filled up by the Petitioner and had been presented for encashment as disputes had arisen between the parties.

5. The learned Trial Court after recording the evidence and after due consideration came to a conclusion that though Section 138 of the NI Act raises a presumption upon the accused but in the present case, the accused has been able to successfully rebut the presumption and raised a probable defence that the cheque in question was not issued by her to the Petitioner in discharge of her liability and acquitted the Respondent herein.

6. Heard learned Counsel for the parties and perused the material on record.

7. Learned Counsel for the Petitioner states that the Trial Court had completely misdirected itself in acquitting the Respondent herein. He states that the cheque had been signed by the Respondent but the rent agreement and the rent receipts have not been produced. He states that friendly loans had been taken and even though there is no loan agreement, the Respondent has not been able to rebut the presumption raised against her that the cheques had been given to repay the loan. He states that the prime reason given by the Trial Court while acquitting the Petitioner was that there were other complaints under Section 138 of the Negotiable Instruments Act which had also been filed for repayment of loans. He states that the fact that other complaints had been filed cannot be taken into consideration for rebutting the presumption under Section 139 of the Negotiable Instruments Act.

8. Learned Counsel for the Petitioner states that the Respondent has



2024:DHC:6028



drawn the cheque on an account maintained by her for the payment of money and the cheque has been presented within a period of six months from the date it was drawn, which had been returned with the endorsement '*payment stopped by Drawer*'. He states that notice for demand was given and the money has not been paid. He states that the Respondent has not shown that she has not filed any complaint for returning the cheque and in such cases it cannot be said that the presumption which is statutorily raised against the Respondent has been rebutted. He also contends that the story put up by the Respondent that she has given unfilled cheques for payment of rent is not believable because when the rent payable is known, it is inconceivable that any person would give a blank cheque for payment of rent. He states that blank cheques are normally given as security for repayment of loans and the cheques given for payment of rent are always filled with amount of rent.

9. This Court has examined the arguments raised by the learned Counsel for the Petitioner.

10. The cheque has been issued from the account maintained by the Respondent. The signature has been admitted by the Respondent and, therefore the mandatory presumption has arisen against the Respondent that the cheque that has been drawn in favour of the Petitioner is for discharge of a liability.

11. The question which arises for consideration is as to whether the Respondent herein has rebutted the presumption and has the learned MM had appreciated the facts in correct perspective. This Court has gone through the depositions. The Respondent has deposed that she was residing on rent in the house of the Petitioner and the rent of the premises was about



2024:DHC:6028



Rs.14,000-15,000/- a month. No loan agreement has been produced. The facts stated by the learned Counsel for the Petitioner shows that friendly loans were advanced repeatedly to all family members. The fact that there were three complaints which were filed against the Respondent cannot be denied.

12. Three complaints have been filed by the Petitioner. The instant case arises out of the first complaint. The second complaint is Ct. Case No.27315/2018 which has been filed by the daughter of the Petitioner against the Respondent herein. The third one being Ct. Case No.27316/2018 which has been filed by the Petitioner and his daughter against the Respondent and her mother-in-law. The learned Trial Court has observed that in all the three complaints, the story is more or less identical that loan had been advanced, meeting was held for payment of loans and a cheque has been signed for repayment of those loans. The conclusion drawn by the learned Metropolitan Magistrate that the story given in all the three complaints are on similar lines and that similar meetings at similar point of time were held between the Complainant/Petitioner (being part of one family), his daughter against the accused/Respondent (being part of other family), her mother-in-law cannot be believed is a probable view and cannot be said to be perverse.

13. The learned MM was of the opinion that all the three complaints have been filed by different Complainants (being part of one family) against the accused/Respondent (being part of the other family) alleging some amounts given by one member of the Complainant's family to other member of the accused family and conducting a meeting with the accused and her family in the 2nd week of November, 2017 in which the accused/Respondent or her



family is stated to have handed over cheques to the Complainant and his family but such a meeting within the family is doubtful. This Court is of the opinion that the appreciation of evidence by the learned Metropolitan Magistrate cannot be said to be perverse.

14. The Apex Court in Basalingappa v. Mudibasappa, (2019) 5 SCC 418, which has also been relied on by the Respondent, has succinctly summarized the principle regarding the presumption raised under Section 139 of the Negotiable Instruments Act and is rebutted by the accused. Paragraph 25 of the said judgment reads 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.”

(emphasis supplied)

15. A perusal of the aforesaid paragraph shows that if the accused raises a probable defence that the standard of proof of rebutting the defence is that of preponderance of probability and if a probable defence is raised, then the presumption can be rebutted. The Apex Court in Rajaram Through LRs v. Maruthachalam Through LRs, 2023 SCC OnLine SC 48, after relying on Basalingappa (supra) held as under:-

“27. It can thus be seen that this Court has held that once the execution of cheque is admitted, Section 139 of the N.I. Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has however been held that 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. It has further been held that 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. It has been held that 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.

28. In the said case, i.e. Basalingappa v. Mudibasappa (supra), the learned Trial Court, after considering the evidence and material on record, held that the accused



2024:DHC:6028



had raised a probable defence regarding the financial capacity of the complainant. The accused was, therefore, acquitted. Aggrieved thereby, the complainant preferred an appeal before the High Court. The High Court reversed the same and convicted the accused. This Court found that unless the High Court came to a finding that the finding of the learned Trial Court regarding financial capacity of the complainant was perverse, it was not permissible for the High Court to interfere with the same.”

16. As noted above, the reason given by the Trial Court after appreciating evidence cannot be said to be perverse. The conclusion arrived at by the learned Trial Court is a plausible view and this Court while exercising its revisional jurisdiction cannot substitute its conclusion to the one arrived at by the learned Metropolitan Magistrate just because another view possible. This Court, is therefore, not inclined to grant leave to appeal under Section 378(4) of the CrPC.

17. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2024

hsk