IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-A-871-MA-2016
DATE OF DECISION: 18.03.2025

DEVENDER SHARMA
...APPLICANT/APPELLANT

Versus

BANIT DALAL ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate for the appellant.

Mr. I.S. Pabla, Advocate for the respondent.

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<u>SANDEEP MOUDGIL, J (ORAL)</u>

<u>CRM-13963-2016</u>

Application seeking exemption from placing on record certified copies of Annexure A1- A5.

Heard.

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

<u>Main Case</u>

1. The instant criminal appeal has been preferred against the impugned judgement dated 10.02.2016 passed by the JMIC, Bahadurgarh. Whereby the accused-respondents have been acquitted.

2. Facts and circumstances giving rise to this appeal are that :

One plot measuring 1500 square yards bearing khasra no. 288/249/2 situated within the abadi of Revenue estate village Kalu-Sarai, New Delhi was sold by the complainant-appellant to the accused-respondent vide sale deed dated 18.10.2010 for the total consideration of Rs 87,00,000/-. Two cheques bearing No. 030699 and 030700 for the consideration of Rs 40,00,000/- and 35,00,000/- respectively dated 18.10.2010 were issued, and the remaining balance amount of Rs 12,00,000/- were paid in two parts of Rs 5,00,000/- cash and a subsequent cheque of Rs 7,00,000/- which was duly honoured. The complainant-appellant had cordial relations with the accused-respondents both the cheques mentioned above were accepted as sufficient cash was unavailable with the accused-respondents, post one month time they were presented to the HDFC bank Delhi-Rohtak road, Bahadurgarh on 13.11.2010 which got dishonoured with remarks "payment stopped by drawer" vide memo dated 15.11.2010. Thereafter a legal notice dated 13.12.2010 was issued, however no reply was received and accussed respondents failed to make the payment of the due amount with the 15 day time frame, thus the present complaint under section 138 of the Negotiable Instruments Act (herein after referred to as the N.I. Act) dated 18.01.2011 was filed.

3. **Contentions**

The complainant-appellant contends that the trial court has illegally acquitted the accused-respondents without appreciating the fact that the accused-respondents admittedly issued both the cheques in question bearing No. 030699 and 030700 for the consideration of Rs 40,00,000/- and 35,00,000/- respectively dated 18.10.2010 as mentioned above. Also, admittedly signed both the cheques meaning thereby that there was existence of legally enforceable debt. It is further argued that as there was no rebuttal of the legal notice dated 13.12.2010, therefore the presumptions under section 138 and section 139 of the N.I. Act rests in favour of the complainant-appellant, whereby the court "shall presume" the legal liability of the drawer of the cheques for the amounts for which the cheques are drawn.

The ld. Counsel for the complainant-appellant further contends that the trial court has wrongly recorded that the accused-respondents led evidence rebutting the presumption under section 118 and section 139 N.I. Act by taking the stance that post execution of the sale deed dated 18.10.2010 (EX. C-3) the accused-respondent along with others went to take the possession of the land and found the same to be encroached upon. Thereafter, a deal for the consideration of Rs 75,00,000/- to acquire the possession of the vacant land was struck, whereas no such suggestion was put forth by the accused-respondents, and the accused-respondent further had led before the trial court that the two cheques in question were issued in the lieu of the same transaction as security which got mis-utilised by the complainant-appellant, the same aspersion is illegal and perverse as no such suggestion was made.

He further, argued that the story is highly improbable that land amounting to Rs 87,00,000/- was purchased without checking the status of the same and further an amount of Rs75,00,000/- would be agreed upon to vacate the same land as mentioned above and it is, also improbable that a receipt of Rs 5,00,000/- was taken by the accused-respondent, but a sum of Rs 80,00,000/- was paid without taking any receipt, in view of the aforementioned it cannot be said that a rebuttal qua the legal presumption was raised in favour of the complainant-appellant. The aforementioned cheques in question were issued in lieu of existing legally enforceable debt, therefore making the observation of acquittal by the trial court is erroneous. Also, the trial court has not properly dealt with the presumption as the cheques in question as per the statement as made by Pratap Kaushik, Asst. manager, ICICI Bank, Bahadurgarh (CW-1) the instruction to stop the payment was received qua the cheques in question, therefore the cheques in question did not get cleared because the payment was stopped, from this it evident that the cheques which bore the signatures and admittedly issued by the accused-respondent meaning thereby that the legal presumption raised against the respondent-accused has not at all rebutted, thus making the judgment of acquittal bad in law.

The counsel lastly submits that the vide sale deed dated 18.10.2010 (EX. C-3) it has been recorded that a sum of Rs 80,00,000/- has been received by the complainant-appellant from the accused-respondents in many different spells vide separate receipt but no such receipt have been put forth to subvert the fact the cheques were not issued in discharge of the legally enforceable debt, and the defence taken by the accused respondents to the complaint filed by the complainant-appellant is totally false as it is admitted that the accused-respondents had not filed any complaint prior to 23.11.2011 which therefore, is merely an afterthought of the present complaint being filed by the complainant-appellant on 18.10.2011.

4. **Analysis**

This court is conscious of the judgment 10.02.2016 passed by the JMIC, Bahadurgarh, wherein it has been categorically found that one Nanwa was the owner of the disputed property which was subsequently sold to one Mange Ram from whom the present complainant-appellant had purchased the disputed property, but could not come forth with any sale deed establishing the afore-stated. It is also stated that the sale deed dated 18.10.2010 was executed in presence of witnesses and a consideration of Rs 87,00,000/- was paid and no amount whatsoever was left outstanding. The accused-respondents later discovered that the complainant-appellant was not having possession over the disputed property and third party was having possession of the same, and to attain the possession another sum of Rs 75,00,000/- was demanded by the complainant-appellant and for that same reason the two cheques in question bearing No. 030699 and 030700 for the consideration of Rs 40,00,000/- and 35,00,000/- respectively dated 18.10.2010 were issued as a security and not in discharge of any existing legally enforceable debt. It is, when the complainant-appellant was unable to fulfil the promise of vacant possession the accused-respondent issued a legal notice dated 18.01.2011 to the complainant-appellant but no reply was given and till date the third party is in possession of the disputed land.

This court from the aforementioned consideration of facts and circumstances with the discussions based there upon is of the view that the complainant-appellant failed unable to establish that the cheques in question were issued against any existing legally enforceable debt, as is evident from the executed sale deed dated 18.10.2010 (EX. C-3) that the complainant-appellant had received the entire amount of Rs 87,00,000/-, wherein it is also admitted that a sum of Rs 5,00,000/- had been received as cash and a sum to the tune of Rs 7,00,000/- had been received by way of cheques bearing no. 435147 dated 18.10.2010 drawn on ICICI bank, Pritam Pura. It is the complainant-appellant, at that onset had failed to recite that the cheques bearing No. 030699 and 030700, had been received in lieu of the payment of Rs. 75,00,000/- and it is well settled that under section 91 and 92 of the Indian Evidence Act prohibits the recitals of documents being rebutted by way of oral evidence.

And this court's view pertaining to the presumption under section 118 and section 139 of the N.I. Act is that the accused-respondent was able to probabilise his version by way of the legal notice issued dated 18.01.2011 to the complainant-appellant, therefore, shifting the onus to rebut the version and prove beyond reasonable doubt the existence of any legally enforceable debt. Though, the court is obliged to raise presumption as contemplated under section 118 and section 139 of the N.I. Act, and the same is otherwise rebuttable in nature.

Having regard to the definition of term "proved" and "disproved" as contained in section 3 of the Indian evidence Act as the nature of the said burden upon the accused is not necessarily that he shall discharge the same by stepping into the witness box.

The accused can raise probable defence against the presumption, and if it is proved that existence of consideration was improbable or doubtful or illegal, the onus would be on complainant to prove it as a matter of fact and upon failure to prove the same, he would be disentitled to be granted the relief. The burden on the accused for proving the non-existence of the consideration/legally enforceable debt can either be direct or by bringing on record the prepotency of probabilities by referencing the circumstances being relied upon. Where the accused fails to discharge the initial onus of presumption the complainant becomes invariably entitled to benefit under the presumption of section 118 and 139 of the N.I. Act.

In view of the analysis made herein above this court finds that the judgment of acquittal dated 10.02.2016 passed by the JMIC, Bahadurgarh based on law and not erroneous. Therefore this court finds no cogent reason to interfere with the same as it also the settled principle of law as held by the Apex court in the case as titled State of Maharashtra v. Fazal Rehman Abdul 2013(13) SCC 898 held as under:

> *"9. This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal , the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken*

into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court . In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal . The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

10. We had been taken through the evidence by Shri Mukul Gupta, learned senior counsel for the appellant, but we do not find any reason to interfere with the cogent reasons given by the Special Judge. The appeal lacks merit and is accordingly dismissed .”

5. **Decision**

In view of discussion, the present appeal is dismissed in aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

18.03.2025
anuradha (P)

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