IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

113 **CRM-A-1817-MA-2014**
Date of Decision: 30.04.2025

MANOJ KUMAR GARG

…..APPELLANT

VERSUS

ARUN SHARMA PROP. M/S AMBA TRADERS

…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manan Bhardwaj, Advocate
Amicus Curiae for the applicant/appellant.
Mr. Gaurav Jindal, Advocate for the respondent.

****

SANDEEP MOUDGIL, J

1. The application under Section 378(4) CrPC has been filed by the appellant seeking leave to appeal against the judgment dated 11.09.2014 passed by JMIC, Kaithal (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act').

2. Briefly, facts of the case are that the appellant filed a complaint against the respondent under the provisions of Section 138 of the Negotiable Instruments Act, 1881, for dishonour of cheque due to non-payment. The respondent, in discharge of his legally enforceable liability and outstanding debt towards the complainant, issued a cheque bearing No. 022980 dated 25.02.2011 for an amount of ₹3,97,000/- (Rupees Three Lakhs Ninety-Seven

Thousand only) drawn on Corporation Bank, Ambala Road, Kaithal from his account in favour of the complainant. Originally, the cheque was dated 25.12.2010; however, the accused himself altered the date to 25.02.2011 and authenticated the said alteration by affixing his signature on the cheque at the place of alteration. The appellant presented the said cheque for encashment on 23.07.2011 through his banker, Punjab National Bank, Kaithal, to the accused's banker, Corporation Bank, Ambala Road, Kaithal but the same got dishonoured and returned unpaid by the banker of the accused vide return memo dated 23.07.2011 with the reason "Payment stopped by the Drawer" mentioned at Serial No. 1 of the said memo. Thereafter, the appellant upon receipt of the dishonoured cheque and the cheque return memo on 23.07.2011, served a legal demand notice dated 25.07.2011 to the accused under Section 138(b) of the Negotiable Instruments Act, 1881, through registered post with acknowledgment due, sent to both the residential and business addresses of the accused, demanding payment of the cheque amount. One of the notice envelopes was returned undelivered; however, the other was duly served upon the accused, thereby satisfying the legal requirement of notice under the Act but despite service of the legal notice, the accused has failed and neglected to make the payment of the cheque amount within the statutory period of fifteen days, and the amount remains unpaid till date. Hence, the act of the accused constitutes an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. Learned counsel for the appellant submits that the learned Judicial Magistrate Ist Class, Kaithal has committed a grave error in law and on facts by misappreciating the evidence adduced by the complainant-

appellant. The testimony of the complainant-appellant, duly supported by the bank witness CW-1 Shri Ankur Rastogi, establishes beyond reasonable doubt that the accused-respondent issued the cheque in question towards discharge of a legally enforceable debt. There is no cogent or reliable evidence on record to rebut this presumption or establish the innocence of the accused-respondent.

4. He further submits that the Learned Trial Court further erred in holding that the presumption under Section 139 of the Negotiable Instruments Act, 1881, does not arise in the present case. The issuance of the cheque by the accused-respondent stands admitted and proved. The denial of liability by the accused-respondent in his reply dated 12.08.2011 is a bald and unsubstantiated assertion. The legal presumption under Section 139, which mandates that the cheque was issued in discharge of a debt or liability, stands unrebutted. Therefore, the findings of the learned Trial Court are perverse and liable to be set aside.

5. Further, learned Judicial Magistrate Ist Class, Kaithal has erred in considering the status and conduct of the accused-respondent, who is an established proprietor and businessman. It is implausible that such a person would issue a cheque without an underlying legal liability. The accused-respondent has not denied his signature on the cheque in question (Ex. P-4), nor has he led any evidence to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act. In the absence of such rebuttal, the presumption stands, and the offence under Section 138 is clearly made out beyond reasonable doubt.

6. Heard.

7. Having heard the counsel for the appellant and going through the case file, this court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

8. From the perusal of the judgment by the trial court, it is evident that the respondent has submitted a reply to the statutory legal notice, as per the same, the accused has specifically taken the plea that the cheque in question was lost, thereby denying that it was ever issued to the complainant in discharge of any liability. Furthermore, the accused has categorically denied having taken any loan from the complainant. In view of this defence, the burden lies upon the complainant to adduce cogent and reliable evidence to establish the source of funds and to prove that a substantial amount was actually advanced to the respondent as a loan.

9. Further it is rightly observed by the Trial Court that the present complaint is devoid of merit and is primarily based on cheque, which was never issued by the respondent in favour of the appellant towards discharge of any legally enforceable debt or liability. It is the specific defence of the respondent that the said cheque was lost and not handed over to the appellant. In support thereof, the respondent had submitted an application to Corporation Bank dated 18.10.2010, as well as an intimation to the SHO, Police Station City, Kaithal, reporting the loss of the cheque, moreso, the appellant has not approached the Court with clean hands. Reference is made to the civil suit for recovery filed by the appellant against the respondent, titled ***Manoj Kumar vs. Arun Sharma***, wherein the appellant had claimed to have advanced a friendly loan to the respondent. However, in the present complaint, during his cross-

examination, the appellant admitted that the amount in question was given to the respondent for securing employment, which clearly indicates that the alleged liability arose out of a void *ab initio* agreement, moreso, the burden lies upon the appellant to prove that the alteration was done in the cheque and the appellant has failed to establish that the cheque was issued in discharge of a debt or liability arising out of a loan transaction. Further, the appellant must first prove that he had the financial capacity to advance such a substantial amount. However, in the present case, the appellant could not specify the exact date, time, or place of the alleged loan transaction. These serious lapses go to the root of the appellant's case and render it unreliable.

10. Moreover, presumptions under section 138 and 139 of the NI Act are rebuttable presumptions and same are rebuttable on preponderance of probabilities. It is a settled principle of law that once the defence is able to rebut the presumption under the NI Act, it is for the complainant to prove the case beyond all reasonable doubts and the same has been supported by the Apex Court in ***M/s Kumar Exports vs M/s Sharma Carpets Crl Appeal No. 2045 of 2008.***

11. In the light of above discussion, this court is of the strong view that no fault can be found with the judgment passed by the trial court and as such the present application under section 378(4) Cr.P.C stands declined as well the appeal, having no merit stands dismissed.

12. Ordered accordingly.

13. Registry is directed to pay the remuneration to the learned Amicus Curiae for the appellant as per law.

(SANDEEP MOUDGIL)
JUDGE

30.04.2025
Anuradha (a)

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