



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

250**CRM-A-542-2024****Date of decision: 08.01.2025**

Manoj Sharma

...Petitioner

V/s

Om Parkash Tanwar & ors.

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr.Ranjeet Singh Chauhan, Advocate,
for the applicant-complainant.

MANJARI NEHRU KAUL, J. (ORAL)

1. Prayer in the instant appeal filed under Section 378(4) of Cr.P.C. is for grant of Special Leave to Appeal from an order of acquittal dated 31.01.2024 passed by Judicial Magistrate Ist Class Faridabad in NACT No.3342-2019 under Section 138 of the Negotiable Instruments Act, 1881.

2. The appellant-complainant is before this Court challenging the acquittal by the learned trial Court of accused-respondent for offence under Section 138 of the Negotiable Instrument Act, 1881, by contending that the trial Court failed to appreciate the evidence in its proper perspective.

3. The case of the appellant/complainant is premised on the allegation that he advanced a friendly loan of Rs.15 lakhs to the accused-respondent on 14th April, 2017 in the presence of one Begraj. The accused-respondent purportedly admitted his legally enforceable liability and issued



two cheques bearing Nos.954429 and 954430, both dated 8th April, 2019, for Rs.7,50,000/- each drawn on Indian Overseas Bank, Faridabad, as repayment of the said loan.

4. On presenting cheque No. 954430/- for encashment, the same was dishonoured on 15th April, 2019 with the remark “funds insufficient”. Subsequently, the complainant issued a legal notice to the accused-respondent on 24th April, 2019, demanding payment of the dishonoured cheque amount. However, despite service of the notice, no payment was made by the accused-respondent, leading to the initiation of proceedings under Section 138 of the Negotiable Instrument Act, 1881.

5. The learned trial Court, after considering the evidence and material on record, acquitted the accused-respondent, holding that the complainant failed to substantiate his case. The trial Court observed that the complainant did not lead any cogent evidence to establish that the cheque in question was issued in discharge of a legally enforceable debt or liability; the complainant failed to examine Begraj; the alleged witness to the transaction; the complainant also failed to name or examine any of the three to four persons from whom he claimed to have arranged the sum of Rs.15 lakhs; the receipts relied upon by the complainant lacked authenticity as they did not bear the names of either the complainant or the accused-respondent.

6. Learned counsel for the appellant-complainant has submitted that the learned trial Court failed to properly evaluate the evidence on record. Learned counsel argued that the accused-respondent admitted his



liability by issuing two cheques and signing the receipts produced by the complainant. The accused-respondent did not dispute his signatures on the cheques or the receipts, thereby attracting the statutory presumption under Section 139 of the Negotiable Instrument Act, 1881. Learned counsel still further argued that the accused-respondent failed to discharge the burden of rebutting the said presumption by leading cogent evidence, however, the trial Court fell into grave error while passing the impugned judgment acquitting the respondent-accused.

7. I have heard learned counsel for the parties and perused the relevant material placed on record.

8. As per the case of the complainant himself, the alleged loan transaction of Rs.15 lakhs took place in the presence of one Begraj. However, the complainant did not summon or examine the said witness to corroborate his version. This omission casts serious doubt on the veracity of the claims of the complainant. Furthermore, it was asserted that the complainant had arranged the sum of Rs.15 lakhs from three to four individuals. Despite this assertion, the complainant neither disclosed the names of these individuals nor produced them as witnesses. This raises significant questions regarding the genuineness of the alleged loan transaction. Furthermore, the receipts produced by the complainant, purportedly evidencing the transaction, do not bear the names of either the complainant or the accused-respondent. This deficiency creates substantial suspicion about the authenticity and further weakens the case of the complainant.



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9. While Section 139 of the Negotiable Instrument Act, 1881 raises a presumption that a cheque was issued in the discharge of a debt or liability, such presumption is rebuttable. In the present case, the accused-respondent by pointing out significant gaps and inconsistencies in the evidence led by the complainant, has successfully rebutted the presumption. The complainant, on the other hand, failed to discharge the burden of proving the existence of a legally enforceable debt or liability.

10. In view of the foregoing, this Court finds no reason to interfere with the well reasoned judgment of the trial Court. The complainant's failure to lead cogent evidence regarding the alleged loans transaction, coupled with the absence of corroboration from material witnesses, justifies the acquittal of the accused-respondent.

11. Leave to appeal declined.

(MANJARI NEHRU KAUL)
JUDGE

January 08, 2025

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