IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

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CRM-A-787-2024
Date of Decision: 01.05.2025

SUMER SINGH

…..APPELLANT

VERSUS

BEGRAJ

…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Devender Arya, Advocate
for the applicant/appellant.
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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 02.04.2024 passed by Judicial Magistrate First Class, Mohindergarh, (in short, 'the trial court'), vide which the respondent in Criminal Complaint No. NACT-121-2022 under section 138 of Negotiable Instruments Act,1881, (in short, 'the NI Act') has been acquitted.

2. Briefly, facts of the case are that the complainant-appellant gave friendly loan of Rs.2,20,000/- with interest at 2% per annum to the respondent-accused wherein he after admitting his pre-existing liability issued a cheque in favour of complainant-appellant for an amount of Rs.3,00,000/- bearing cheque no. 214138 dated 03.03.2022 but during the encashment, the cheque was dishonoured vide bank memo dated 04.03.2022 with remarks "OLD CHQ OBC UNI". Thereafter, the complainant-appellant issued a legal

notice dated 07.03.2022 but despite that the respondent-accused did not make any payment which compelled the complainant-appellant to file a complaint under section 138 of NI Act which was dismissed. Hence, the present appeal.

3. Counsel for the appellant contends that the trial court has erred in law while not considering the fact that all the ingredients to constitute an offence under section 138 of the NI Act read with section 142 of NI Act were duly proved against the accused-respondent wherein it is settled law that once the execution of the cheque is admitted, the presumption of section 118 and section 139 of the NI Act arises.

4. He vehemently argues that the trial court has not taken into consideration the fact that in the present case, the respondent-accused did not file any complaint against the appellant-complainant even after knowing the fact of alleged misuse of his cheque. This conduct of the respondent-accused is sufficient to put a question mark on the veracity of the defence of the respondent-accused.

5. In addition, it is argued that the trial court has failed to appreciate the fact that from the evidence tendered on behalf of the appellant-complainant, the offence u/s 138 of the NI Act clearly stands proved against the respondent. The oral evidence as well as the documentary evidence tendered by the complainant has been misread by the trial court.

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 prima facie ,the statement of the complainant-appellant that the respondent-accused was in need of money and therefore he borrowed Rs.2,20,000/- from him. Although, the law is well settled that to rebut the presumption, the accused is not required to appear in the witness box and he can also rely upon the presumptions available under the Evidence Act yet in the present case, the respondent-accused himself has examined as DW-2 and has tendered his affidavit Ex.DW/2A and he has also examined his son as DW-1 who has also tendered his affidavit Ex.DW1/A in support of the respondent-accused.

9. Further, it is duly proved on the case file that the appellant-complainant had given a loan to the respondent-accused many times and the respondent-accused has raised a probable defence by placing on the case file record that he had returned the loan amount. Although, the appellant-complainant had shown his ignorance about repayment of the loan amount but the respondent-accused had placed on record his case file Bank record. Also, the appellant-complainant is a money lender and a prudent man will not believe that a money lender can give any amount to nay person without any security document so the possibility cannot be ruled out that while advancing loans to the respondent-accused, the appellant-complainant had taken some blank signed cheques and Pronotes.

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. Also, the Hon'ble Apex Court in ***"John.K.Abraham Vs Simon C.Abraham and another 2014(1) SCC 791"*** has held that in order to draw presumption under section 118 read with section 139, burden lies on the complainant to show:

(i) that he had the requisite funds for advancing the sum of money loan in question to the accused.
(ii) that the issuance of cheque by the accused in support of repayment of money advanced was true and
(iii) that the accused was bound to make payment as had been agreed while issuing cheque in favour of complainant.

12. 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 dated 02.04.2024 and as such the present application under section 378(4) Cr.P.C as well as the appeal, having no merit stands dismissed.

13. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

01.05.2025
anuradha

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