IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

247 **CRM-A-877-2024 (O&M)**
Date of Decision: 08.05.2025

MUKESH **…..Appellant**

VERSUS

VIJAY KUMAR **…..Respondent**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr Narayan Parsad, Advocate and
Mr. Ritesh Bansal, Advocate for the applicant/appellant.

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SANDEEP MOUDGIL, J (Oral)

CRM-25714-2024

This application has been filed for condonation of delay of 10 days in filing the appeal.

For the reasons recorded in the application, the same is allowed and delay of 10 days in filing the appeal is condoned.

Main case

1. By filing the present application, under Section 378(4) Cr.P.C. the applicant/appellant has assailed the judgment dated 22.03.2024, passed by the Judicial Magistrate Ist Class, Narwana, Jind dismissing the complaint and acquitting the respondent-accused therein of the notice of accusation served upon him under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. Factual matrix leading to the filing of present petition folds as under:-

The brief facts, as stated in the complaint, are that Accused No. 2 is engaged in the business of a chit fund company operating under the name and style of *Jeunesee Life Care Marketing*. The accused had taken a loan from the complainant, with a promise to repay the same on demand along with interest at the rate of 24% per annum. The complainant advanced the loan amount to the accused partly in cash and partly through bank transfers from the accounts of the complainant himself, Mahinder Garg, Surender Kumar, and Shamsher Singh. In discharge of his pre-existing liability, the accused issued a Multi-City Cheque bearing No. 032069 dated 10.12.2018 for an amount of ₹10,00,000/-, drawn on his account maintained with Central Bank of India, Sunam, in favour of the complainant. When the complainant presented the said cheque with his banker, Yes Bank, Narwana, it was returned unpaid with the endorsement "Funds Insufficient" vide return memo dated 03.01.2019. Thereafter, the complainant served a registered legal notice dated 29.01.2019 upon the accused, calling upon him to make the payment of the cheque amount. However, the accused failed to comply and instead sent a false and evasive reply. Hence, complaint was filed before the Trial Court.

3. It is contended that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further averred by the learned counsel for the petitioner that the complainant has duly and fully proved the ingredients of Section 138 of the N.I. Act, 1881, but the learned trial Court failed to appreciate the evidence led by the complainant on record and returned a finding of acquittal while dismissing the complaint in question. The

presumption under Section 139 of the N.I. Act, 1881 is very strong in favour of the complainant in the present case, but still the impugned judgment has been passed ignoring all well settled legal positions and as such, the judgment suffers from grave injustice, illegality and perversity. Hence, the same is liable to be set aside.

4. Heard learned counsel for the appellant.

5. This Court after going through the submissions and pleadings made is of the view that the complainant/appellant failed to prove a legitimate source of income for advancing Rs. 10,00,000 to the accused. The complainant's Income Tax Returns (Ex.DA) for 2017-18, 2018-19, and 2019-20 revealed a gross income of only Rs. 3,00,000/- casting doubt on their financial capacity to lend such a large amount. Consequently, the complainant couldn't establish the accused's legal liability for the amount. In contrast, the accused successfully rebutted the presumption under Section 139 of the Negotiable Instruments Act, raising doubts about the loan's legitimacy.

6. The Apex Court in case of ***Rangappa Vs. Sri Mohan 2010(4) Law Herald (SC) 2296*** has held that when an accused has to rebut the presumption raised under section139 of Negotiable Instruments Act the standard of proof for doing so is that of preponderance of probabilities'. So, the contention raised by the the accused have to be examined in light of aforementioned presumptions in favour of the complainant and law regarding standard of proof laid down by the Apex Court in aforementioned judgment. Standard of proof required for rebutting such presumption is not as high as that of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting

the presumption would stand discharged. In the present case also, the respondent-accused has raised a probable defence. Hence, it can safely be held that the impugned judgment does not suffer from any illegality or perversity.

7. It is a settled law as held in ***C. Antony v. K.G. Raghavan Nair, 2002(4) RCR(Criminal) 750*** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

8. On perusal of the judgment passed by the trial Court dated 22.03.2024, this Court is of the considered view that the said judgment well reasoned and is based upon proper appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or requiring any interference by this Court. The accused-respondent has been duly able to rebut the presumption under Section 139 of the N.I. Act, 1881 and as such, he has rightly been acquittal of the notice of accusation served upon him.

9. Accordingly, the leave to appeal stands declined.

10. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

08.05.2025
anuradha (a)

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