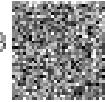


2025:PHHC:003488



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

223

CRM-A-2651-2019

Date of Decision: 10.01.2025

SANDEEP ANAND

.....Petitioner

VERSUS

PARAMJIT KAUR

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vipul Goel, Advocate
for the petitioner (through hybrid mode).

SANDEEP MOUDGIL, J (Oral)

1. By filing the present application, under Section 378(4) Cr.P.C. the applicant/appellant has assailed the judgment dated 20.08.2019, passed by the Judicial Magistrate Ist Class, Ludhiana, 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 unfolds as under that a criminal complaint u/s 138 of the Act was filed by the appellant-complainant against the respondent-accused on the ground that she was having cordial relations with the appellant-complainant and in the month of September, 2013, she requested the appellant-complainant for financial help of Rs.5 lacs for her personal

use with a promise to payback the said amount within short period. The appellant-complainant after getting the assurance gave the money to the respondent-accused and thereafter she issued a cheque no. 239804 dated 22.03.2014 for Rs.5 lacs in favour of the appellant-complainant which when presented to the bank was dishonoured vide memo dated 25.03.2014 with the remarks 'Funds Insufficient' and the respondent-accused failed to make the payment inspite of legal notice which compelled the appellant-complainant to file complaint against the respondent-accused. The said complaint u/s 138 of the Act led to acquittal of the respondent-accused which is arbitrary in nature. Hence, the presence appeal.

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 appellant-complainant that he had proved his case beyond shadow of reasonable doubt and had also proved the issuance of cheque against legal liability for which the cheque in question was issued by respondent-accused and the same was dishonoured on account of insufficient funds.

4. Heard.

5. I have perused the impugned judgment carefully and have also gone meticulously through the findings recorded by the trial Court wherein the appellant-complainant has failed to produce any authenticated record to show that how he arranged for such an amount i.e how he has made payment of Rupees five lakhs to the respondent-

accused. Further, at this stage it is apposite to mention section 139 of the Act which is reproduced herein below:-

“139. Presumption in favour of holder.—

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

No doubt, in view of provision contained in Section 139 of the Act, an initial presumption to the effect that the cheque has been issued in discharge of his liability has to be raised in favour of holder of cheque and it is for the accused to dispel the initial assumption in favour of the complainant.

But to avail benefit of the said provision, it was incumbent upon the appellant-complainant to prove due execution of cheque in question along with his source as to how he managed to lend such a hefty amount to the respondent-accused. Failing to do the same, I do not find any perversity or illegality therein as respondent-accused has raised a probable defence by rebutting the presumption under section 139 of the Act, which is worthy credence, especially when, the appellant-complainant failed to prove any legally enforceable debt.

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 Section 139 of Negotiable Instruments Act the standard of proof for doing so is that of preponderance of probabilities'. So, the contention raised by 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 20.08.2019, 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 acquitted of the notice of accusation served upon him.

9. Accordingly, the leave to appeal stands dismissed.

10.01.2025
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No