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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.L.P. 256/2018**

VIVEK KHANNAPetitioner

Through: Mr. Bankey Bihari, Adv.

versus

ALI AKBAR SHAHRespondent

Through: Mr. Bajrang Vats, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

20.03.2025

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1. The present leave to appeal is filed against the judgment dated 06.01.2018 (hereafter '**impugned judgment**') passed by the learned Metropolitan Magistrate ('**MM**'), Saket Courts, Delhi in Complaint Case No. 836036/2016, whereby the respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

2. The learned Trial Court acquitted the respondent / accused on the ground that the petitioner / complainant failed to establish the legal enforceability of the debt in respect of the twelve dishonoured cheques which form the subject matter of the complaint. It was held that the cheques were not shown to be issued against a subsisting legally enforceable debt.

3. The case of the petitioner is that he and his wife had jointly purchased the ground floor property at G-38, Lajpat Nagar-II, New Delhi ('**subject property**') which was already tenanted to the respondent in terms of the registered lease agreement dated 09.10.2013. As per the lease agreement, the respondent had



handed over twelve cheques bearing date 17.08.2016, each of ₹62,500/- totalling ₹7,50,000/- in favour of the complainant purportedly towards rental payments. Upon presentation, all twelve cheques were returned unpaid with remarks indicating 'insufficient funds' vide the return memos dated 18.08.2016.

4. A statutory demand notice dated 02.09.2016 was served upon the respondent. Upon failure to make payment, the present complaint under Section 138 of the NI Act was filed by the complainant.

5. The learned Trial Court, after recording evidence and hearing the parties, acquitted the respondent on the finding that the petitioner had failed to establish that the dishonoured cheques were issued in discharge of any legally enforceable debt or liability. It was observed as under:

"8. This court is of the opinion that the accused Ali Akbar Shah has been able to raise a probable defence and rebut the above presumption due to the following reasons:-

(a) The complainant has averred in his complaint that all the 12 cheques were deposited by him towards payment of rent. However, there are no specific particulars of the period for which rent was due either in the complaint or in the affidavit. This fact becomes significant as rent was payable by way of advance cheques on the seventh day of each month as per the lease agreement Ex. CW1/A, However, all the cheques are dated 17.08.2016. It is also pertinent to note that the lease premises were sold to the present complainant by the earlier owners during the subsistence of the lease. During the cross examination, the complainant has stated that he had no knowledge if the accused was complying with the terms and conditions of the lease agreement prior to the present dispute. He has also stated that the cheques were given towards rent agreement for surety. This is precisely the defence of the accused. The complainant has not offered any explanation for the contrary stand taken as to whether the cheques were issued for payment of rent or for surety. It becomes significant as the complainant has admitted in the cross examination that the rent of the lease premises was paid through cheque as well as by



cash by the accused. He has further stated that the lease agreement was to expire on 30.09.2016 and the lease premises was given to some other person on lease on 01.09.2016. However, he later denied knowledge of exact date of second lease. All these contradictions cast doubt on the veracity of complainant's version.

(b) The complainant has failed to disclose the exact and material particulars of the liability of the accused. When the said liability of the cheque amount was not stated in the complaint, it was the duty of the complainant to clarify the same at the stage of cross examination. However, the complainant has miserably failed to explain the nature of legally enforceable liability of the accused. In fact, when he was categorically questioned as to the amount of

Rs.7,50,000/- (cheque amount) being due upto which month, he stated “/ cannot answer as I cannot understand the question. Again said the said amount was for about a duration of 15-18 months”. On further cross examination, he merely stated that the aforementioned amount was due for rent before 17.08.2016 i.e. the date of all cheques. He has further deposed that he used to maintain calculations regarding the dues but he has not produced any balance sheet pertaining to the same in the present case. At this stage, it is pertinent to mention the judgment of Hon'ble Delhi High in Pine Product Industries And Anr. vs R.P.Gupta And Sons And Anr. II (2007) BC 20 wherein the order of conviction was reversed as the material details were absent in the complaint and the averments therein were vague in nature. Nothing prejudicial to the case of accused has been elicited from the cross examination of complainant.

(c) Learned counsel for the complainant has vehemently asserted that since the signature on the impugned cheques have not been denied by the accused, presumption under Section 139 is in favour of the complainant and is sufficient to convict the accused under Section 138, NI Act, It has been held by the Hon'ble Kerala HC in Bindu v. Sreekantan Nair 2Q07(3) RCR Criminal 72 and reaffirmed in the decision of the Hon'ble Punjab & Haryana High Court in M/S Sekhon and Sekhon Finance v. Rani 2013(3) DCR 120 that mere admission of signatures on the cheque does not amount to admission of guilt especially when the accused has taken a specific plea stating that the cheque in question was not issued towards discharge of any legally enforceable liability. It has been further held that the standard of proof in a criminal case is different for the prosecution / complainant and the accused. The accused has a constitutional right to maintain silence and he/



*she may discharge his burden on the basis of the material already brought on record,
(d) Thus, in view of the above discussion, evidence brought on record by the parties and on the basis of shortcomings in the complainant's version, this court is of the view that the accused has been able to raise a probable defence that the impugned cheques were not given for discharge of any legally enforceable liability.”*

6. The learned counsel for the petitioner submits that the learned Trial Court erred in not appreciating the terms of the registered lease agreement, which clearly mentioned the issuance of 36 cheques. It was argued that these cheques were issued towards monthly rent, and their dishonour gave rise to liability under Section 138 of the NI Act.

7. He submits that the learned Trial Court adopted an overly technical view by insisting on specific pleadings as to the rental period covered by the dishonoured cheques, despite the existence of the lease agreement.

Analysis

8. It is trite law that a Court while considering the challenge to an order of acquittal ought to only interfere if the Court finds that the appreciation of evidence is perverse [***Rajaram s/o Sriramulu Naidu (since deceased) through LRs:Criminal Appeal No. 1978 of 2013***].

9. The present case, however, relates to acquittal of an accused in a complaint under Section 138 of the NI Act. The restriction on the power of Appellate Court in regard to other offence does not apply with same vigor in the offence under NI Act which entails presumption against the accused. The Hon’ble Apex Court in the case of ***Rohitbhai Jivanlal Patel v. State of Gujarat : (2019) 18 SCC 106*** had observed as under:



“12. According to the learned counsel for the appellant-accused, the impugned judgment is contrary to the principles laid down by this Court in Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] because the High Court has set aside the judgment of the trial court without pointing out any perversity therein. The said case of Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] related to the offences under Sections 304-B and 498-A IPC. Therein, on the scope of the powers of the appellate court in an appeal against acquittal, this Court observed as follows : (SCC p. 221, para 36)

“36. Careful scrutiny of all these judgments leads to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.”

*The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essentially to remind the appellate court that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt and a judgment of acquittal further strengthens such presumption in favour of the accused. **However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of inquiry therein. The same rule with same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.”***

(emphasis supplied)



10. It is also well settled that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque/ respondent received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan*:(2010) 11 SCC 441**].

11. The Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh* : (2023) 10 SCC 148**, while discussing the appropriate approach in dealing with presumption under Section 139 of the NI Act, observed the following :

“54. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.

55. At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption) :
Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the “particular circumstances of the case”?

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57. Einstein had famously said:



amount of rent due at the time of presentation, or the total arrears outstanding. The petitioner merely states that the cheques were issued in respect of rent but fails to establish any linkage between the dishonoured cheques and a subsisting, quantified liability.

14. The learned MM rightly noted that there was an absence of basic foundational facts required to attract the offence under Section 138 of the NI Act. In fact, the cheques were all dated 17.08.2016, nearly three years after the lease agreement was executed, and no explanation was offered as to why they were presented at that point in time. The petitioner relied on the lease agreement to assert the existence of a landlord-tenant relationship, but he did not allege in his pleadings or demonstrate through evidence that rent for any specific months remained unpaid. It is neither pleaded nor been supported with any evidence that the respondent had not paid the rent for certain months and that the cheque presented represents the liability of the respondent for those months

15. Even in oral arguments before this Court, when specifically questioned, learned counsel for the petitioner was unable to point out where in the record the cheques were stated to have been issued towards unpaid rent for a defined duration.

16. Though it is well established that even security cheques may, in appropriate cases, fall within the ambit of Section 138 of the NI Act if they are ultimately presented in discharge of a legally enforceable debt however, in the present case, there is a palpable paucity of evidence to suggest that the impugned cheques were issued by the respondent in discharge of such debt. The petitioner has neither pleaded nor proved the specific nature, quantum, or date of the alleged liability. In contrast, there appears



to be stronger evidentiary support for the version advanced by the respondent, whose consistent contention before both the learned Trial Court and this Court has been that the cheques were issued merely as security at the inception of the tenancy, and not in discharge of any accrued liability. This defence, coupled with the lack of material from the petitioner linking the cheques to a subsisting debt, tilts the balance of probabilities in favour of the respondent.

17. Furthermore, an order of acquittal reinforces the presumption of innocence that operates in favour of the accused. While considering an application for leave to appeal, the Appellate Court is duty-bound to assess whether the view taken by the Trial Court is not only legally tenable but also reasonably possible on the basis of the evidence on record. Unless the findings of the Trial Court are shown to be manifestly perverse, contrary to law, or wholly unsupported by the evidence, the Appellate Court must exercise restraint and refrain from interfering with an acquittal. Reversal of such an order should be undertaken only with due circumspection.

18. In view of the aforesaid, this Court finds no ground to grant leave to appeal. Consequently, the leave petition is dismissed.

AMIT MAHAJAN, J

MARCH 20, 2025