HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 378 No. - 60 of 2023

Sushil Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Manish Kumar Tripathi
Counsel for Opposite Party(s)	:	Ankit Yadav, G.A., Umesh Singh

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Court No. - 90

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. Heard Sri Manish Kumar Tripathi, learned counsel for the applicant; Sri Umesh Singh, learned counsel for the opposite party and Sri Rahul Asthana, learned A.G.A. for the State respondent.

2. The present appeal has been filed against the judgement and order dated 22.02.2023 passed by Peethasin Adhikari Atirikta Nyalaya Court No.2, Meerut in Criminal Case No.1063 of 2019 (Sushil Kumar Vs. Kanwart Sain Garg) under Section 138 of the Negotiable Instruments Act, 1881 whereby the accused- respondent has been acquitted of the charge under Section 138 Negotiable Instrument Act, 1881.

3. The case of the complainant, in brief, is that a transaction for purchase of a house situated at Khadauli, District Meerut was settled between the complainant and the accused for a total consideration of Rs.17.10 lakhs. As per the alleged agreement, the accused was required to pay an advance amount of Rs.5 lakhs before execution of sale deed. In this regard the accused allegedly issued three cheques in favour of the complainant, out of the said three cheques, two cheques amounting to Rs.2.50 lakhs and Rs.1 lakh respectively were duly encashed, whereas, the third cheque for Rs.1.50 lakhs was dishonored on account of mismatch/non verification of drawer's signature. Consequently, proceedings under Section 138 of Negotiable Instruments Act were initiated.

4. The defence of the accused was that the three cheques had been handed over to the complainant by way of security in connection with the proposed sale transaction and that the payment was subject to the complainant furnishing relevant documents establishing his ownership over the property. It was further contended that the complainant had already encashed due

cheques, but no legally enforceable debt existed against the accused, in respect of the remaining cheques.

5. An important circumstance emerging from the record is that the complainant subsequently sold the very property to another person. This circumstances assumes significance while examining the nature and subsistence of the alleged liability arising out of the proposed sale transaction between the parties.

6. Once the complainant himself proceeded to transfer the property in favour of the third person the very foundation of the proposed sale transaction between the complainant and the accused stood materially altered. In the absence of any material establishing that the accused continued to be under an independent contractual or monetary obligation to pay the remaining amount of Rs.1.50 lakhs, merely because a cheque had earlier been handed over by way of security, the same cannot automatically be treated as representing a legally enforceable debt or liability.

7. It is well settled that for attracting the provisions of Section 138 of the Negotiable Instruments Act, the cheque must have been issued towards the discharge of legally enforceable debt or other liability. The existence of a cheque and it's dishonor by themselves do not dispense with this essential statutory requirement. Although, the presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881 operate in favour of the holder of the cheque, such presumptions are rebuttable and the accused may discharge the corresponding burden by raising the probable defence on the basis of the material available on record.

8. In the facts of the present case, the subsequent sale of the property by the complainant to a third person, coupled with the encashment of the two cheques out of the three cheques issued in connection with, lends considerable support to the defence that the remaining cheque did not represent an existing legally enforceable liability. The complainant was required to establish that notwithstanding the subsequent transfer of the property, some independent and subsisting monetary liability continued to exist against the accused, and in the absence of satisfactory material establishing such liability, the essential ingredients of Section 138 of Negotiable Instruments Act, 1881 remains unfulfilled.

9. The trial Court upon appreciation of the evidence and the surrounding circumstance has recorded a finding of acquittal. The view taken by the trial Court cannot be said to be unreasonable or perverse, rather, the circumstances noticed above provide a reasonable basis for conclusion that

the complainant failed to establish the existence of the legally enforceable debt or liability corresponding to the cheque in question.

10. It is also well settled that an order of acquittal carry with it a reinforced presumption of innocence in favour of the accused, where the view taken by the trial Court is a plausible view based upon evidence; interference by the appellate Court is not warranted because another view is also possible.

11. Having considered the submission advanced on behalf of the appellant and the material available on record, this Court does not find any perversity, illegality or manifest error in the judgment and order impugned herein so as to warrant interference. No substantial ground for admission of the appeal is made out. Accordingly, the application for leave to appeal is rejected at admission stage. Consequently, the appeal is also rejected.

October 27, 2026
Dev

(Mrs. Vani Ranjan Agrawal,J.)

Digitally signed by :-
DEV PRAKASH
High Court of Judicature at Allahabad