



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

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CRM-A-710-2024

Date of Decision: 01.05.2025

SUMER SINGH

.....APPELLANT

VERSUS

PUSHPA DEVI

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Anjali, Advocate
for the applicant/appellant.

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 08.02.2024 passed by Sub Divisional Judicial Magistrate, Mohindergarh, (in short, 'the trial court'), vide which the respondent in Criminal Complaint No. NACT-198-2019 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.2,00,000/- with interest to the respondent-accused wherein she after admitting her pre-existing liability issued a cheque in favour of complainant-appellant for an amount of Rs.2,00,000/- bearing cheque no. 627177 dated 01.06.2019 but during the encashment, the cheque was dishonoured vide bank memo dated 03.06.2019 with remarks "Funds



Insufficient”. Thereafter, the complainant-appellant issued a legal notice dated 04.06.2019 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. She vehemently argues that the trial court has not taken into consideration the fact that in the present case, accused-respondent is a material witness but has not examined himself as witness in the case.

5. In addition, it is argued that the respondent-accused did not file any complaint against the complainant-appellant if it is believed to be true that he had misused the cheque in question. This conduct of respondent-accused is sufficient enough to put a question mark on the veracity of the defence of the respondent-accused.

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 she borrowed Rs.2,00,000/- from him and the said



amount was given on loan on recommendation of one Kailash, son of Kanhiya and Rambilas, son of Rajender but strangely, none of them have been not been examined by the complainant-appellant and rather on the other hand, Rambilas, son of Rajender appeared as DW-1 wherein he deposed that he had never asked the complainant-respondent to give loan of Rs.2,00,000/- to the respondent-accused.

9. Further, no writing or receipt has been placed on record by the complainant-appellant which could prove that he had given loan of Rs.2,00,000/- to the respondent-accused as loan. Also, the source of income of the complainant-appellant is totally unexplained therefore, it is unbelievable that the complainant-appellant had handed over such a hefty amount as loan without any documentation or receipt.

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

13. Ordered accordingly.

01.05.2025
anuradha

(SANDEEP MOUDGIL)
JUDGE

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