

2025:PHHC:054333



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

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**CRM-A-419-2024
Date of Decision: 02.04.2025**

HEMLATA SHARMA

.....APPELLANT

VERSUS

GANGA RAM

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate for the appellant.

SANDEEP MOUDGIL, J (ORAL)

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 18.01.2024, passed by the Judicial Magistrate Ist Class, Faridabad, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under section 138 of the Negotiable Instruments Act (for short ' the Act').

2. Factual Matrix of the case leading to the filing of present petition unfolds as that the husband of the appellant-complainant was a close friend of the respondent-accused, who borrowed an amount of Rs. 3,00,000/- from the appellant-complainant who gave the same on behalf of her husband on 12.05.2016. To repay the amount, the respondent-accused issued a cheque bearing no. 113659 dated 02.07.2018 for Rs. 3,00,000/- drawn on OBC Bank, Sector 3, HUDA Market, Ballabgarh in favour of the

appellant-complainant which was returned back unpaid with remarks of “*Kindly contact drawer/drawee bank and present again*” vide return memo dated 03.07.2018. Thereafter, the appellant-complainant sent legal notice to the respondent-accused on 25.07.2018 by Post however no reply was received by the appellant-complainant which compelled her to file complaint against the respondent-accused under section 138 of Negotiable Instruments Act, 1881 and the same led to acquittal of the respondent-accused vide judgment dated 18.01.2024. Hence, the present 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 contended that the trial Court has failed to take into consideration the fact that the signatures over the cheque in question has been admitted by the accused-respondent which was sufficient to prove that the cheque in question had been issued against a legally recoverable debt. It is well settled position in law that once an accused admits his signatures on the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but inspite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 18.01.2024 is liable to be set aside.

4. It is also argued that the trial court did not acknowledge the fact that as to why the respondent-accused did not take his cheques back in case no amount was due or if the complainant-appellant was not returning

the cheque then why no complaint was made regarding same before any authority.

5. I have heard learned counsel for the appellant and gone through the record.

6. The respondent-accused in his statement under section 313 Cr.P.C, 1973 denied the incriminating materials put-forth by the appellant-complainant, and further stated that he took an amount of Rs.86,000/- from Dr.Bhura in the year 2015 and he issued a cheque as security wherein no amount or date was mentioned over the cheque in question and it was the appellant-complainant and her husband who had put up date and amount thereon. He further submits that he does not owe any legal liability towards the appellant-complainant. Now this version creates a serious doubt on the story of the prosecution and raises a probable defence in favour of the accused, who very rightly has been able to rebut the presumption under Section 139 of Negotiable Instruments Act.

7. From perusal of the record in hand, it is also evident that during the cross examination of the appellant-complainant, she testified herself to be a housewife wherein she specifically stated that she does not remember the date on which the cheque in question was given to her and moreover categorically stated that the amount in question was given to the respondent-accused by her husband and not by her.

8. Having heard the facts and after going through the judgment of the trial court, this court finds no reason to disbelieve the contentions of the respondent-accused inasmuch as the appellant-complainant has failed to prove that the cheque was issued against the legally enforceable debt and moreover the defence put by the respondent-accused is supported by substantial proof wherein he has been able to raise a cogent doubt

regarding the truthfulness of the issuance of the cheque in question and once the presumption under sections 118(A) and 139 of the Act of 1881 stands rebutted by the accused, the burden is upon the complainant to prove that the cheque was issued by the accused in discharge of any existing legal liability which the appellant-complainant has failed to prove.

9. 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.

10. On perusal of the judgment passed by the trial Court dated 18.01.2024, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the respondent-accused.

11. Accordingly, the leave to appeal stands declined.

12. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

02.04.2025

Meenu

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