IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

134 **CRM-A-84-MA-2014**
Date of Decision: 15.05.2025

ISHWAR SINGH

…..APPELLANT

VERSUS

SURESH CHAND BHARDWAJ

…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jitender Dhanda, Advocate
Ms. Suman Sagar, Advocate and
Ms. Kamla Malik, Advocate for the appellant.

Mr. P.K. Chugh, Advocate for the respondent.

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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 10.12.2013 passed by JMIC, Hisar (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act').

2. Briefly, facts of the case are that The accused, in partnership with the complainant, commenced a business under the name and style of *M/s Shivam Stone Traders*, with its head office situated at House No. 178, Opposite State Bank of India, Mathura Road, Badarpur, New Delhi. In this

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regard, a partnership deed dated 18.04.2006 was duly executed between the parties. A total sum of ₹23,17,047/- was invested in the business, out of which the complainant contributed ₹14,83,235/-. It was mutually agreed that the complainant would be entitled to the repayment of his capital contribution of ₹14,83,235/- along with interest, and with respect to the remaining capital, he would be entitled to 50% of the profits. In April 2007, the parties mutually settled their accounts, and it was determined that a sum of ₹7,87,641/- was due and recoverable by the complainant from the accused. In discharge of the said legally enforceable liability, the accused issued a cheque bearing No. 935505 dated 13.09.2007 for an amount of ₹7,87,641/- (Rupees Seven Lakh Eighty-Seven Thousand Six Hundred Forty-One Only), drawn on Standard Chartered Bank, 20, Community Centre, New Friends Colony, New Delhi, in favour of the complainant. However, upon presentation of the said cheque at Punjab National Bank, Jawahar Nagar, Defence Colony Branch, Hisar, the same was returned dishonoured with the endorsement “Insufficient Funds” as per the return memo dated 12.10.2007. The complainant received intimation of the dishonour of the cheque through bank memo dated 27.10.2007. Despite service of a legal notice dated 06.11.2007 demanding payment of the said amount within the stipulated statutory period of 15 days, the accused failed to comply and did not make the payment, thereby rendering himself liable under the relevant provisions of the Negotiable Instruments Act, 1881.

3. Learned counsel for the appellant submits that the learned Judicial Magistrate Ist Class, Hisar has committed a grave error in law and on facts by misappreciating the evidence adduced by the complainant-appellant wherein the respondent-accused failed to honour the cheque given by him for

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a sum of Rs. 333235/- and further also failed to pay a sum of Rs. 1 lakh which was agreed to be paid immediately.

4**.** He further submits that the Learned Trial Court further erred in holding that the issuance of cheque was itself admitted by the respondent-accused during the cross examination, therefore, it seems that the learned trial Court has based its observations upon hyper technical grounds.

5. In addition, he submits that since the issuance of the cheque by the accused-respondent stands admitted and proved, the legal presumption under Section 139, which mandates that the cheque was issued in discharge of a debt or liability, stands unrebutted. Therefore, the findings of the learned Trial Court are perverse and liable to be set aside.

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 evident that the cheque was not filled by the respondent-accused wherein he had examined Shamsher Singh Malik, handwriting expert whose evidence suggests that the body of the cheque was not filled by the accused-respondent. Further, in terms of Ex. P-9, a total amount of Rs. 10, 50,000/- was to be recovered by the appellant-complainant from the third party and only the amount of Rs. 433235/- was to be paid by the respondent-accused to the complainant-appellant and to the contrary in paragraph No. 4 (a) it has been shown that an amount of Rs. 12,67,047/- was to be recovered by the appellant-complainant and the accused from the third party and if this amount is divided

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by two then it comes to Rs. 633523/-. So, if the amount of Rs. 10,50,000/- (which has been shown in paragraph No. 3(a) and was to be recovered by the appellant-complainant from the third party) and an amount of Rs. 633523/- is added the total comes out to be Rs.16,83,523/- which is more than the amount of Rs. 14,83,233/- as mentioned in paragraph No. 3 of the agreement i.e. Ex. P-9.

9. Meaning thereby if gone by the contents of document Ex.P-9 in paragraph No. 3(a), 4(a) then the total amount recovered by the appellant-complainant was Rs. 10,50,000/-. So, it is very strange that a person has executed the document Ex. P-9 which is not reliable piece of document having self contrary statement, hence, from Ex. P-9 only it cannot be concluded that the respondent-accused was under the liability to pay an amount of Rs. 787641/-. Moreover, keeping in view the fact that the complainant and respondent-accused were partners in the firm and in their dealing of day to day business, respondent-accused had given the complainant blank signed cheque which seems to be clearly misused by him.

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. 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

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

12. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

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anuradha (a)

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

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