

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CRM-A-1374-2023
Date of Decision: 02.04.2025

MANJU RANI

.....APPELLANT

VERSUS

ADARSH VIDYA MANDIR EDUCATION SOCIETY, THASKA AND
OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raman Chawla, 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 07.08.2023 passed by Sub Divisional Judicial Magistrate, Siwani, District Bhiwani (in short, 'the trial court'), vide which the respondent no.1 and 2 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 complainant-appellant was partner having share of 33% in Adarsh Vidya Mandir School alongwith Accused-respondent no.2. An agreement was executed on 07.10.2018 between them wherein the complainant-appellant released her share in favour of the respondent and he agreed to pay an amount of Rs. 11 lacs in lieu of that released share. Thereafter, accused-respondent no.2 issued two cheques i.e cheque no. 118739 dated 07.05.2019 amounting Rs. 5,00,000/- and cheque no.

118740 dated 07.05.2019 amounting to Rs.6,00,000/- both drawn at Punjab National Bank, Durjanpur in favour of the complainant-appellant, the said cheques were returned dishonoured with remarks "Funds Insufficient" which compelled the complainant-appellant to issue legal notice dated 02.09.2019 but still the accused-respondents did not make the payment which led to filing of the complaint.

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. He vehemently argues that the trial court has not taken into consideration the fact that the amount given to accused-respondent no.1 and 2 has duly been proved by way of leading evidence and date of amount has been fully proved and issuance of cheque has also been admitted meaning thereby, signatures has been admitted upon the cheques by the respondent no.2.

5. In addition, it is argued that the documents exhibited D-1 to D-6 by the accused-respondents were not the original cheques which have been relied upon by the trial court wherein the same has not been proved by anyone and rather they do not have any connection with the present case.

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 persual of the judgment by the trial court, it is evident that accused-respondent no.2 took specific plea that he used to give blank signed cheques to the complainant-appellant and the same has been proved by exhibiting document Ex D-1 to Ex D-5 which were the cheques given earlier. Further, if any compromise was effected between the complainant-appellant and the accused-respondent then what was the point of issuing two cheques in the sum of Rs.5,00,000/- and Rs. 6,00,000/- respectively instead of issuing single cheque to the amount of Rs. 11,00,000/-.

9. 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*.

10. 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.

11. Ordered accordingly.

02.04.2025
Anuradha

(SANDEEP MOUDGIL)
JUDGE

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