



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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Date of Decision: 02.04.2025

CRM-A-598-MA-2015 (O&M)

SARWAN SINGH

.....APPELLANT

VERSUS

JAGPAL SINGH

.....RESPONDENT

CRM-A-772-MA-2015 (O&M)

SARWAN SINGH

.....APPELLANT

VERSUS

KARAMJEET SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Simran Sharma, Amicus Curiae
for the applicant/appellant.

SANDEEP MOUDGIL, J

The court vide this order shall dispose of two petitions bearing CRM-A-598-MA-2015 and CRM-A-772-MA-2015 as both involve same question of law. For brevity, CRM-A-598-MA-2015 is taken as lead case.

1. The application under [Section 378\(4\)](#) Cr.P.C. has been filed by the appellant seeking leave to appeal against the judgment dated 28.01.2015 passed by Judicial Magistrate 1st class, Jalandhar (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 respondent-accused in order to discharge part of his legally enforceable liability, issued two cheques in the name of appellant-complainant bearing cheque no. 034954 dated 04.05.2010 for Rs. 50,000/- (cheque no. 030878 dated 05.02.2010 for Rs.1,00,000/- in CRM-A-722-MA-2015) drawn on Axis Bank Limited, Station Road, Kashipur in favour of appellant-complainant with the assurance that the same be honoured on presentation. On its presentation, the said cheque was returned back dishonoured vide memo dated 11.05.2010 with remarks "*Insufficient Funds*". Upon this, the appellant-complainant got issued a legal notice dated 10.06.2010 upon the respondent-accused under section 138 of NI Act through registered letter as well as UPC calling upon the respondent-accused to make the payment within fifteen days of stipulated time but he failed to make the payment which compelled the appellant-complainant to file complaint under section 138 of NI Act which was erroneously 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 respondent-accused 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 the cheque was issued by the appellant-



complainant in lieu of an oral agreement to sell, which has been admitted by the respondent-accused. Moreover, it is a settled proposition of law that an oral agreement to sell being an oral contract is legally enforceable in nature and the cheque amount had to be paid as a part of the earnest money which is a legally enforceable liability.

5. In addition, it is argued that the trial court failed to consider the fact that the signatures on the cheque were admitted by the respondent-accused and till date no complaint has been filed by the respondent-accused with respect to the cheques in question to have been stolen or any such incident of that nature.

6. Heard and meticulously gone through the record in hand.

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 respondent-accused has categorically stated that he did not owe any legally enforceable debt towards the appellant-complainant and rather the cheques in question were given as a security for the purchase of one agricultural land from the appellant-complainant but he despite receiving part of the sale consideration failed to execute any sale deed or any agreement to sell in favour of the respondent-accused.

9. Further, the appellant-complainant had admitted the fact that the cheques in question had been given in respect of sale consideration for the sale of an agricultural land situated at Uttrakhand. He had also stated that out

of total sale consideration, the sum of Rs. 70,000/- was only due against the respondent-accused.

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. It is a cardinal principle of criminal jurisprudence that the prosecution has to stand on its own legs to establish the guilt of the accused beyond the shadow of reasonable doubt. Prosecution can, in no ways take benefit from the defence version and in the instant case, the appellant-complainant has failed to bring on record the guilt of the respondent-accused under section 138 of NI Act.

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.

14. A photocopy of this order be placed on the file(s) of connected case(s).

(SANDEEP MOUDGIL)
JUDGE

02.04.2025
anuradha(v)

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