(2033) 12 SHI CK 0001

Himachal Pradesh HC

Case No: Criminal Appeal No. 296 Of 2014

Laxman Dass & Others	APPELLANT
Vs	
Roop Chand	RESPONDENT

Date of Decision: Dec. 16, 2033

Acts Referred:

- Negotiable Instruments Act, 1881-Section 11(a), 138, 139
- Code Of Criminal Procedure, 1973-Section 313, 378, 386

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Neeraj Gupta, Ajeet Pal Singh Jaswal, Parul Negi

Final Decision: Disposed Of

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment dated 15.07.2014, passed by learned Additional Sessions Judge-I, Shimla Camp at Rohru, District Shimla, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 28.08.2010 passed by learned Judicial Magistrate F rst Class, Jubbal, (learned Trial Court) were set aside. (The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short, NI Act).
It was asserted that the parties had a good relationship with each other. The accused issued a cheque of ₹3,50,000/- in favour of the complainant to discharge his long-standing liabilities. The complainant presented the cheque to .P. State Cooperative Bank Ltd. Jubbal, District Shimla, H.P., however, the cheque was dishonoured with an end rsement insufficient funds. The complainant issued a

legal notice to the accused asking him to repay the amo nt within 15 days from the receipt of the notice. The accused sent a reply stating that nothing was payable to the complainant as the debt was barred by limitation. Hence, a complaint was filed before the Court for taking action against the accused as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined himself (CW-1) and Inder Singh Mokta (CW-2) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied that he had borrowed a sum of ₹3,50,000/-from the complainant and issued a cheque to discharge his liability. He stated that he had handed over a blank cheque to the complainant in 2002. He had sent a reply to the legal notice. He had made the payment to the complainant, and nothing remained payable. He examined Roop Chand (DW-1) and Ravi Sehra (DW-2) to prove his defence.

6. Learned Trial C urt held that the issuance of the cheque was not disputed, and a presumption arose under Section 118(a) and 139 of the NI Act that the cheque was issued for consideration to discharge the liability. The plea taken by the accused that he had repaid the amount was not proved. The cheque was dishonoured with an endorsement insufficient funds. The notice was served upon the accused, but he failed to repay the amount; hence, the learned Trial Court convicted the accused for the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for three months and pay a compensation of ₹3,50,000/-.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-I, Shimla Camp at Rohru, District Shimla, H.P. (learned Appellate Court). Learned Appellate Court held that the complainant asserted in paragraph 2 of the complaint that the accused was in arrears of long-standing liability and had issued the cheque o discharge the liability. He mentioned in the notice that the accused had borrowed ₹3,50,000/- and issued a cheque to repay the amount. The complainant stated on oath that the accused had taken ₹3,50,000/ - from him in December 2005 and issued a cheque to disc arge the liability. He disowned the contents of the complaint that the cheque was issued to discharge the long-standing arrears. The evidence of the complainant regarding the existence of liability was contradictory and could not be believed. The learned Trial Court erred in believing this version, and the judgment and order passed by the learned Trial Court were not sustainable. Consequently, the appeal was allowed, and the judgment and order passed by the learned Trial Court were set aside.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the complainant filed the present appeal, asserting that the learned Appellate Court failed to appreciate the provisions of Section 139 of the NI Act. The learned Trial Court had convicted the accused by well well-reasoned judgment. The financial transaction between the parties was not denied. The accused claimed that he had repaid the amount, but failed to produce any evidence to prove this fact. The variations in the complaint, notice and complaint were highlighted to acquit the accused, which is impermissible. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Neeraj Gupta, learned Senior Counsel, ass sted by Mr Ajit Pal Singh Jaswal, learned Counsel for the appellants and Ms Parul Negi, learned counsel for the respondent/accused.

10. Mr Neeraj Gupta, learned Senior Counsel appearing on behalf of the appellant/complainant, submitted that the accused admitted the issuance of the cheque; therefore, a presumption would arise that the cheque was issued for consideration to discharge the liability. The learned Appellate Court ignored this presumption and relied upon discrepancies in the evidence to acquit the accused. All the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

11. Ms Parul Negi, learned counsel for the respondent/accused, submitted that the learned Appellate Court had rightly discarded the complainants evidence regarding the existence of liability. The presumption under Section 118(a) and 139 of the NI Act is rebuttable, and the discrepancies highlighted by the learned Appellate Court were sufficient to rebut the presumption. The learned Appellate Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the learned Appellate Court while deciding an appeal against acquittal. Hence, she prayed that the present appeal be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. The present appeal has been filed against a judgment of acquittal. It was laid down by the Honble Supreme Court in Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no easonable person could have reached. It was observed at page 440:

12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High ourt only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on

record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

14. This position was reiterated in P. Somaraju v. State of A.P., 2025 SCC OnLine SC 2291, wherein it was observed:

12. To summarise, an Appellate Court undoubtedly has full power to review and reappreciate evidence in an appeal against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. However, due to the reinforced or double presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in a manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own A catena of the recent judgments of this Court has more firmly entrenched this position, including, inter alia, Mallappa v. State of Karnataka 2024 INSC 104, Ballu @ Balram @ Balmukund v. The State of Madhya Pradesh 2024 INSC 258, Babu Sahebagouda Rudragoudar v. State of Karnataka 2024 INSC 320, and Constable 907 Surendra Singh v. State of Uttarakhand 2025 INSC 114.

15. The present appeal has o be decided as per the parameters laid down by the Honble Supreme Court.

16. The complainant asserted in paragraph 2 of the complaint as under:

2. That the accused, who was in arrears of long-standing liabilities against him, issued a cheque bearing No. 2421822 in favour of the complainant for the sum of Rs 3,50,000/- dated 10.05.2006 to his banker, the Himachal Pradesh State Co-operative Bank Limited, Jubbal.

17. He had asserted in paragraph 1 of the notice as under:-

1. That you have issued a cheque bearing no.2421822 dated 10.5.2006 for the sum of Rs 3,50,000/- in favour of my aforesaid client in discharge of the liabilities standing against you for quite a long time, and as such your cheque dated 10.05.2006 for the sum of Rs 3,50,000/- was for the Himachal Pradesh State Operative Bank Limited, Jubbal.

18. It is apparent from the above that the complainant has not mentioned the nature of the arrears of the long-standing liability in the complaint or the notice. It was laid down by the Honble Supreme Court in Dattatraya v. Sharanappa, (2024) 8 SCC 573: (2024) 3 SCC (Cri) 776: 2024 SCC OnLine SC 1899 that when the complainant was unable to put forth the details of the loan and made contradictory statements, the presumption attached to the cheque will not help him. It was bserved:

30. Admittedly, the appellant was able to establish that the signature on the cheq e in question was of the respondent and in regard to the decision of this Court in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 : (2019) 2 SCC (Civ) 309 : (2019) 2 SCC (Cri) 40, a presumption is to ideally arise. However, in the above-referred c ntext of the factual matrix, the inability of the appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act, 1881. The respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.

31. The trial court had rightly observed that the appellant was not able to plead even a valid existence of a legally recoverable debt, as the very issuance of a cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the respondent had inscribed his signature on the agreement drawn on white paper and not on stamp paper, as presented by the appellant, creates another set of doubts in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act, 1881.

19. The complainant stated on oath that the accused had borrowed ₹3,50,000/- in December 2005 and issued a cheque of ₹3,50,000/- to discharge the liability. He denied in his cross-examination that ₹3,50,000/- was claimed by him as longstanding arrears. He denied that arrears were due since 2008 or that the account was settled in the year 2002. The money was paid to the accused in December 2005, and the cheque was issued on the same day. This is cont adic ory o the complaint and the notice, where the cheq e is stated to have been issued on 10. 05.2006 towards the l ng-standing arrears, clearly suggesting that the cheque was issued after advancing the money. It was laid down by the Honble Supreme Court in Dattatray (supra) that there are contradictions in the complainants statement regarding the issuance of the cheque; his version is not believable. It was observed:-

29. Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint made by the appellant as against his cross-examination, relatable to the time of presentation of the cheque by the respondent, as per the statements of the appellant. This is to the effect that while the appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross-examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the respondent, after a period of six months of advancement Furthermore, there was no financial capacity or acknowledgement in his income tax returns by the appellant to the effect of having advanced a loan to the respondent. Even further, the appellant has not been able to showcase when the said loan was advanced in favour of the

respondent, nor has he been able to explain how a cheque issued by the respondent allegedly in favour of Mr Mallikarjun landed in the hands of the instant holder, that is, the appellant.

20. Thus, in these circumstances, the learned Appellate Court was justified in doubting the complainants version that the cheque was issued to discharge the liability.

21. The accused stated in his proof affidavit that he had borrowed ₹2,00,000/- from the complainant, which was returned in the year 2002. He had handed over a blank cheque to the complainant, who had not returned it despite the assurance. The accused stated in his cross-examination that he had paid the amount in cash in the presence of Pop Lal, son of Mehakru. The money was returned in instalments, and a document was prepared.

22. It was submitted that the accused admitted the existence of a liability of ₹2,00,000/-, which had arisen in the year 2000. The complainant never claimed that the accused had taken a loan of ₹2,00,000/- and had issued the cheque in the year 2006 to discharge his liability. In any case, the loan of ₹2,00,000/- taken in the year 2000 would be barred by limitation in the year 2006, and any cheque issued to discharge a time-barred debt would not fall within the definition of a legally and enforceable debt. (Please see Social Leasing (India) Ltd. vs. Rajan Kumar Kanthwal 2025:HHC:22697). Theref re, no advantage can be derived from the admission made by he accused.

23. Therefore, the learned Appellate Court had taken a reasonable view which c uld have been taken based on the evidence led before the learned Trial Court, and this Court will not interfere with the reasonable view of the learned Trial Court even if anot er view is possible.

24. In view of the above, the present appeal fails, and it is dismissed.

25. The present appeal stands disposed of, so also the pending miscellaneous application(s), if any.

26. A copy of the judgment, along with a record of the learned Trial Court, be sent back forthwith.