

(2010) 02 SHI CK 0029

High Court of Himachal Pradesh

Case No: Criminal MP (M) No. 22 of 2010

Shyam Lal Chauhan

APPELLANT

Vs

Ranjeet Singh

RESPONDENT

Date of Decision: Feb. 24, 2010

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 139

Hon'ble Judges: Surinder Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Surinder Singh, J.

Cr.M.P.(M) No. 22 of 2010.

1. Petitioner seeks leave to appeal by this motion, as the Respondent was acquitted by the learned trial Court in complaint No. 43/3 of 2005 titled Shyam Lal v. Ranjeet Singh, u/s 138 of the Negotiable Instruments Act.

2. Heard and gone through the record.

3. Petitioner filed a complaint before the learned trial Court u/s 138 of the Negotiable Instruments Act, in short "the Act" with the specific allegations that the Respondent borrowed an amount of Rs. 3,50,000/- for the construction of his house and development of Atta chaki (floor mill) and issued a cheque bearing No. 095318 dated 22.11.2004 payable at H.P. State Cooperative Bank Branch office at Narag District Sirmaur, H.P. to discharge his debt liability. When the cheque was presented to the Banker, it was returned with the remarks "exceeds arrangement". Thereafter a statutory notice was served requesting the Respondent to satisfy the debt, he failed. Thus, the complainant was filed before the learned trial Court, u/s 138 of the Act.

4. When the complainant appeared before the Court as CW-1 on 31.1.2005, at the time of leading preliminary evidence, he reiterated the above contentions.

5. On the consideration of the matter, finding a *prima facie* case against the Respondent, the learned trial Magistrate issued the process against the Respondent. Later notice of accusation was put and the trial commenced.

6. At the time of leading evidence by the complainant, he appeared as a prosecution witness but surprisingly did not support the allegations levelled in the complaint and also his earlier statement recorded at the time of leading preliminary evidence in the Court. He took a complete "U" turn and set up a new case that there was a money transaction between him and the Respondent in connection with supply of boxes (peties) and also that the Respondent used to take money from him and the boxes thus, the entire amount accumulated to the tune of Rs. 3,50,000/- . He did not make even a fleeting reference to the earlier story propounded by him, whereas stand of the Respondent had been that the blank cheque Ext. C-1 was issued to the complainant as a guarantee in respect of Rs. 25,000/- . Further that against the said guarantee, he had paid the amount of Rs. 42,500/- on 15.5.2000 which included interest and the taking of loan by him, as alleged is incorrect.

7. Section 139 of the Act raises statutory presumption which reads as under:

139. Presumption in favour of holder:

It shall be presumed, unless the Contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability.

[emphasis supplied]

8. Although, the word "unless contrary is proved" used in the Section signifies the legal presumption which can be rebutted by "proof" and not by bare explanation which is merely plausible.

9. Legally the presumption are the rules of evidence and do not conflict with the presumptions of innocence of the accused, therefore, the prosecution is obliged to prove the case against the accused beyond a reasonable doubt. Thus, such obligation by the prosecution can only be discharged with the help of presumption of law and the fact unless the accused adduces his evidence showing the reasonable possibility of non-existence of the presumed fact.

10. In the instant case, the complainant himself has materially deviated from the allegations made in the complaint, the statutory notice issued to the Respondent and also his statement recorded at the time of leading preliminary evidence is contrary to what he has stated later. His statement is dilatory and contradicting his original stand.

11. The doctrine of reverse burden introduced by Section 139 of the Act has to be delicately balanced depending upon the factual matrix of the each case but it does not raise presumption that the debt was legally recoverable.

12. Therefore, on the basis of the material contradictions above, legal presumption in favour of the Appellant-applicant stands rebutted.

13. Thus, in the circumstances, it was not incumbent upon the Respondent to show by leading evidence the non-existence of the presumed fact, as the contention of the complainant-Petitioner has been repelled by his own force. The learned trial Court candidly and very aptly threadbare examined the evidence of the parties on record and came to the right conclusion that the complainant has failed to prove his case beyond reasonable doubt which requires no interference by this Court and as such leave to appeal is declined.