

Rohitbhai Jivanlal Patel v. State of Gujarat 2019 PLROnline 3410 (SC), (2019) 18 SCC 106 , AIR 2019 SC 1876

2019 PLROnline 3410

SUPREME COURT OF INDIA

Before:-Abhay Manohar Sapre and Dinesh Maheshwari, JJ.

Rohitbhai Jivanlal Patel – Appellant

Versus

State of Gujarat & Anr. – Respondents

Criminal Appeal No. 508 of 2019 (Arising Out of Special Leave Petition (Crl.) 1883 of 2018).
D/d. 15.3.2019.

Negotiable Instruments Act, 1881 Sections 118, 138 and 139 - Examination of evidence by Appellate Court - Ordinarily, the Appellate Court will not be upsetting the judgment of acquittal, if the view taken by Trial Court is one of the possible views of matter and unless the Appellate Court arrives at a clear finding that the judgment of the Trial Court is perverse, i.e., not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essentially to remind the Appellate Court that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the Appellate Court and the nature of inquiry therein. The same rule with same rigour cannot be applied in a matter relating to the offence under [section 138](#) of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability - Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the Appellate Court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused. [Para 11.1]

Negotiable Instruments Act, 1881 Section 118, 138, 139 - Cheques were presented to the bank concerned within the period of their validity and were returned unpaid for the reason of either balance being insufficient or account being closed - All basic ingredients of Section 138 as also of Sections 118 and 139 of the N.I. Act, are complete therefore, it was required to be presumed that

cheques in question were drawn for consideration and holder of the cheques received the same in discharge of the existing debt - Further that accused could not deny his signatures on the cheques in question.[Para 14]

Held, The fact of the matter remains that the appellant could not deny his signatures on the said writing but attempted to suggest that his signatures were available on the blank stamp paper with Shri Jagdishbhai. This suggestion is too remote and too uncertain to be accepted. No cogent reason is available for the appellant signing a blank stamp paper. It is also indisputable that the cheques as mentioned therein with all the relevant particulars like cheque numbers, name of Bank and account number are of the same cheques which form the subject matter of these complaint cases. [Para 18.6]

Negotiable Instruments Act, 1881 Sections 118, 138 and 139 - Acknowledgement by the accused-appellant about existence of a debt - Witness - One of the factors highlighted on behalf of the appellant is that the said writing does not bear the signature of the complainant but and instead, it bears the signatures of said Shri Jagdishbhai - We find nothing unusual or objectionable if the said writing does not bear the signatures of the complainant - The said writing is not in the nature of any bi partite agreement to be signed by the parties thereto - It had been a writing in the nature of acknowledgement by the accused-appellant about existence of a debt; about his liability to repay the same to the complainant; about his having issued seven post-dated cheques; about the particulars of such cheques; and about the fact that the cheques given earlier had washed away in the rain water logging - Obviously, this writing, to be worth its evidentially value, had to bear the signatures of the accused, which it does - It is not unusual to have a witness to such a document so as to add to its authenticity; and, in the given status and relationship of the parties, Shri Jagdishbhai would have been the best witness for the purpose. His signatures on this document, therefore, occur as being the witness thereto. This document cannot be ruled out of consideration and existing this writing, the preponderance of probabilities lean heavily against the accused-appellant. [Para 18.7]

Negotiable Instruments Act, 1881 Section 118, 138 and 139 - Observations of the Trial Court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in know of facts etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of sections 118 and 139 of the NI Act - Trial Court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the Trial Court. [Para 19]

Negotiable Instruments Act, 1881 Section 138 and 139 - Punishment - In the

singular and peculiar circumstances of this case, where the matters relating to 7 cheques issued by the appellant in favour of respondent No. 2 for a sum of Rs. 3 lakhs each are being considered together; and the appellant is being penalised with double the amount of cheques in each case i.e., in all a sum of Rs. 42,00,000/-, in our view, the appellant deserves to be extended another chance to mend himself by making payment of fine, of course, with the stipulation that in case of default in payment of the amount of fine, he would undergo simple imprisonment for a period of one year. [Para 23.1]

Negotiable Instruments Act, 1881 Section 138 and 139 - Presumption - Affect of
- Even after purportedly drawing the presumption under section 139 of the NI Act, the Trial Court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused - This approach of the Trial Court had been at variance with the principles of presumption in law - After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant - The aspect relevant for consideration had been as to whether the accused-appellant has brought on record such facts/material/circumstances which could be of a reasonably probable defence. [Para 17]

Held, In order to discharge his burden, the accused put forward the defence that in fact, he had had the monetary transaction with the said Shri Jagdishbhai and not with the complainant. In view of such a plea of the accused-appellant, the question for consideration is as to whether the accused-appellant has shown a reasonable probability of existence of any transaction with Shri Jagdishbhai? In this regard, significant it is to notice that apart from making certain suggestions in the cross-examination, the accused-appellant has not adduced any documentary evidence to satisfy even primarily that there had been some monetary transaction of himself with Shri Jagdishbhai. Of course, one of the allegations of the appellant is that the said stamp paper was given to Shri Jagdishbhai and another factor relied upon is that Shri Jagdishbhai had signed on the stamp paper in question and not the complainant. [Para 18]

[2019-PLRonline-3410Download](#)