S.C. Bajaj vs State & Anr. on 1 April, 2025

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:

+ CRL.L.P. 637/2019 & CRL.M.A. 41142/2019, CRL.M.A. 5527/2021

S.C. BAJAJ ....

versus

STATE & ANR. ....

+ CRL.L.P. 638/2019 & CRL.M.A. 41161/2019

S.C. BAJAJ ..... Petitioner

versus

STATE & ANR. ....

Advocates who appeared in this case:

For the Applicant : Mr. Murari Tiwari, Ms. Nimisha Mr. Pranshu Prakash and Mr. Rahu Advs.

For the Respondent : Mr.Naresh Kumar Chahar, APP fo State Mr. Rajesh Banati, Mr. Ash Mr. Adil Asghar and Mr. Harsh Gu for R-2

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

CRL.L.P. 637/2019 & CRL.L.P. 638/2019

1. The present leaves to appeal are filed against the judgement dated 30.08.2019 (hereafter 'impugned judgement') passed by the learned Metropolitan Magistrate ('MM'), Saket Courts, New Delhi in Complaint Cases Nos. 521120/2016 and 632692/2016, whereby Respondent No. 2 was acquitted of the offence under Sections 138 and 142 of the Negotiable Instruments Act, 1881 ('NI Act')

2. For the reasons discussed below, leaves to appeal are granted.

CRL.A._____/2025 (to be numbered) and CRL.A._____/2025 (to be numbered)

3. The two complaints under Sections 138 and 142 of the NI Act were filed at the instance of the complainant/ appellant. It is averred that the accused/ Respondent No. 2 is known to the appellant for many years as both have their factories in the same complex in Okhla, Delhi. It is alleged that the appellant advanced a friendly loan of 5,00,000/- in cash to Respondent No. 2, in the month of

April, 2015 after arranging the same from one of his friends namely- Malkait Singh. Thereafter another sum of 4,00,000/- in cash was advanced to Respondent No. 2 by the appellant on another occasion, after arranging the same from the sale of a property by his father.

4. It is alleged that Respondent No. 2 failed to repay the loan amount and after several requests made by the appellant, Respondent No. 2 provided two post-dated cheques bearing Nos. 021603 dated 08.04.2016 for 5,00,000/- and 021604 dated 06.04.2016 for 4,00,000/-, for repayment of the loan amount, however, the same were dishonored on presentation and returned unpaid with remarks 'Funds Insufficient' vide return memos dated 15.04.2016.

Subsequently, upon the non-payment of the amount despite the receipt of statutory notice, the appellant filed the present complaints Nos. 521120/2016 and 632692/2016 respectively.

5. The learned MM vide the impugned judgement drew adverse inference under Section 114 (g) of the Indian Evidence Act, 1872 against the complainant/ appellant for failing to produce any documents to prove the source of the loan of 9,00,000/- to Respondent No. 2. The learned MM placed reliance on the judgements passed by the Hon'ble Apex Court in G. Pankajakshi Amma v. Mathai Mathew : (2004) 12 SCC 83 and Basalingappa v. Mudibasappa : (2019) 5 SCC 418, wherein it was held that it is imperative for the complainant to explain his financial capacity in cash transactions, and that a court cannot aid a party engaged in an illegal transaction. It was noted that in terms of Section 269 SS of the Income Tax Act, 1961, a loan more than 20,000/- cannot be given in cash, without having executed any document in this regard.

6. The learned MM further noted that the defence of the accused/ Respondent No. 2 that the cheques in question were stolen from his office and his signature is false and fabricated, was consistent throughout the trial, and in this regard, he also examined a forensic handwriting expert as DW1, who gave his detailed report, that is Ex. DW1/A. With respect to the presumption under Section 139 of the NI Act, the learned MM noted that the accused/ Respondent No. 2 placed probable defence in his favor to rebut the presumption under the aforesaid provision.

7. The learned counsel for the appellant submitted that the impugned judgement has been passed without appreciation of the material placed on record and is not in accordance with law.

8. He submitted that the learned MM erred in acquitting Respondent No. 2 on the ground that he has rebutted the presumption under Section 139 of the NI Act, even though no evidence was produced by him to show that the cheques in question were stolen from his office. [Ref: Kishan Rao v. Shankargouda : (2018) 8 SCC 165]

9. He placed reliance on the judgement passed by the Hon'ble Apex Court in Raj Kumar Khurana v. State (NCT of Delhi) : (2009) 6 SCC 72, to state that Respondent No. 2 has failed to show any report or intimation made to the bank or any authority in regard to the stolen cheque, and thus, he cannot escape the liability under Section 138 of the NI Act.

10. He relied on another judgement passed by the Hon'ble Apex Court in M. Abbas Haji v. T.N. Channakeshava : (2019) 9 SCC 606 wherein it was held that the burden to explain how the cheque landed in the hands of the complainant is on the accused.

11. He submitted that the learned MM failed to consider the fact that in his reply to the statutory notice issued by the appellant, Respondent No. 2 admitted to the fact that he left "signed cheques" in his office which were stolen, therefore the question of calling a handwriting expert as a witness, does not arise.

12. He submitted that he learned MM erred in dismissing the complaint of the appellant on the ground that he is withholding documents like statements of Bank Account of Malkait Singh from whom he arranged 5,00,000/- and the Sale Deed executed by his father from whom he arranged 4,00,000/-. To buttress his argument he placed reliance on the judgement passed by the Hon'ble Karnataka High Court in V.R. Shresti v. Bhaskar P. :2019 SCC OnLine Kar 2117, to state that mere non-production of a document relating to the source of income to advance a loan, is not a sufficient ground to dismiss the complaint.

13. He further submitted that the appellant has filed an application under Section 391 of the Code of Criminal Procedure, 1973 ('CrPC') to produce additional evidence on record to prove the source of money advanced as loan to Respondent No. 2.

14. Per contra, the learned counsel for Respondent No. 2 submitted that the appellant has not come with clean hands and has concealed the copy of the Forensic Examination and Comparison Report dated 04.07.2019, which declares the signatures on the cheque to be imitated and forged.

15. He submitted that Respondent No. 2 duly rebutted the presumption under Section 139 of the NI Act. The appellant has not only failed to place the documentary evidence to show the source of the money advanced as loan, he has never brought his father and/or Malkait Singh to prove that the sum was arranged from them, and therefore he has failed to discharge the burden of proof which got shifted upon him. [Ref: S. Murugan v. M.K. Karunagaran : 2023 SCC OnLine SC 2041 and Rajaram v. Maruthachalam : (2023) 16 SCC 125]

16. He submitted that the appellant has relied on Ex. CW1/DW1, which is an acknowledgement receipt produced by the appellant before the learned MM, to show that Respondent No. 2 had taken the loan not only from him but from other persons as well, however, a bare perusal of the said document reveals that the same has been signed by a person named Satwinder Kumar and not the present accused/ Respondent No. 2. In this regard, he submitted that none of the other persons mentioned in the said document have ever been brought to the witness box, to prove that they had advanced a loan in favor of Respondent No. 2.

17. He submitted that the appellant has no financial capacity to advance the said loan of 9,00,000/- to Respondent No. 2 as he has himself admitted during cross examination that his business turnover was only 13,00,000/- in the year 2016. He further contended that the appellant has filed the complaint only with an intention to cheat and cause wrongful loss to Respondent No. 2.

18. He submitted that the appellant by filing the application under Section 391 of the CrPC is attempting to re-open the entire trial by leading evidence belatedly, at this stage, when it is not the case of the appellant that the said documents were not in existence at an earlier stage.

19. Heard arguments and perused the material on record as well as the impugned judgement.

20. It is trite law that a Court while considering the challenge to an order of acquittal, ought to only interfere if the Court finds that the appreciation of evidence is perverse. [Ref: Rajaram v. Maruthachalam (supra)]

21. The present case, however, relates to acquittal of an accused in a complaint under Sections 138 read with 142 of the NI Act. The restriction on the power of the Appellate Court in regard to other offence does not apply with the same vigour in the offence under provisions of the NI Act which entails presumption against the accused. The Hon'ble Apex Court in the case of Rohitbhai Jivanlal Patel v. State of Gujarat : (2019) 18 SCC 106 had observed as under:

> "12. According to the learned counsel for the appellant-accused, the impugned judgment is contrary to the principles laid down by this Court in Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 :
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> (2010) 1 SCC (Cri) 288] because the High Court has set aside the judgment of the trial court without pointing out any perversity therein. The said case of Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] related to the offences under Sections 304-B and 498-A IPC. Therein, on the scope of the powers of the appellate court in an appeal against acquittal, this Court observed as follows : (SCC p. 221, para 36) "36. Careful scrutiny of all these judgments leads to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the 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."

(emphasis supplied)

22. It is also well settled that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability are raised against the accused. [Ref. Rangappa v. Sri Mohan:(2010) 11 SCC 441]

23. The Hon'ble Apex Court in Rajesh Jain v. Ajay Singh : (2023) 10 SCC 148, while discussing the appropriate approach in dealing with presumption under Section 139 of the NI Act, observed the following :

> "54. .... Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.
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> 55. At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption) : Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non- existence of debt/liability by a preponderance of probabilities by referring to the "particular circumstances of the case"?
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> 57. Einstein had famously said:

> "If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions."

Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well- defined problem often contains its own solution within it.

58. Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this Court.

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61. The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque."

(emphasis supplied)

24. From a perusal of the impugned judgment, it is seen that the learned MM acquitted the accused/ Respondent No.2 of the offence under Section 138 of the NI Act primarily on two grounds:

> a. Firstly, the learned MM considered the contention of the accused/ Respondent No. 2, that the signed cheques in question had been stolen from his office drawer and observed that the defence of the accused remained consistent throughout the trial.
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> b. Secondly, the learned MM noted that the complainant/ appellant had neither proved his financial capacity nor produced the statement of bank account of Malkait Singh, from whom he had allegedly arranged 5,00,000/-, and the sale deed executed by his father from where he has allegedly arranged 4,00,000/-, to prove the source of loan advanced to the accused.

25. Since the appellant failed to provide any cogent documentary evidence in corroboration of his testimony, the learned MM held that the defence raised by the accused is a probable one to rebut the presumption under Section 139 of the NI Act and that the complainant had failed to discharge the onus, which shifted upon him, to show the existence of a legal financial liability.

26. In the opinion of this Court, the acquittal of Respondent No. 2 in the present case is unsustainable, inter alia for the following reasons:

27. At the outset, since the execution and signatures on the cheques are not disputed, presumption under Section 138 and 118 of the NI Act is raised against the accused and in favour of the

complainant. It is pertinent to note that the presumptions under Section 118 and 139 of the NI Act are not absolute and may be controverted by the accused. In doing so, the accused ought to raise only a probable defence on a preponderance of probabilities to show that there existed no debt in the manner so pleaded by the complainant in his complaint/ demand notice or the evidence. Once the accused successfully raises a probable defence to the satisfaction of the Court, his burden is discharged, and the presumption 'disappears.' The burden then shifts upon the complainant, who then has to prove the existence of such debt as a matter of fact. The Hon'ble Apex Court in Rajesh Jain v. Ajay Singh (supra), in this regard has observed as under:

> "41. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. [Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513] xxx xxx xxx
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> 44. The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundanlal's case- (supra) when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.
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> 45. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [Basalingappa vs.

> Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441]"

(emphasis supplied)

28. In the present case, the accused/ Respondent No. 2 has sought to prove his case by controverting that the cheques in question were not issued in discharge of any legally enforceable debt. It has been contended that the said signed cheques were stolen from his office drawer by the appellant, and that the same were misused. It was also argued that the appellant, as per his own deposition, stated that his annual turnover was 13,00,000/- in the year 2016, besides other rental and agricultural income, which makes it apparent that the appellant did not have the financial capacity to advance the said loan.

29. It is seen that no complaint of the signed cheques being stolen from the office drawer of Respondent No. 2 was made by him. The learned MM erred in noting that Respondent No. 2 was successful in rebutting the presumptions insofar as he did not lead any evidence to corroborate that the signed cheques were forcibly taken from his possession or were misused.

30. Respondent No. 2 has also contested the financial capacity of the appellant to advance the said loan and has argued that the appellant has failed to even prove the source of the said loan amount, since there was neither any independent witness who deposed to that effect nor any document in this regard has been placed by the appellant.

31. The Hon'ble Apex Court in the case of Tedhi Singh v. Narayan Dass Mahant : (2022) 6 SCC 735 had observed that the accused had the initial burden to set up this defence in his reply to the demand notice, stating that the complainant did not have the financial capacity to advance the loan. The Hon'ble Court held as under:

> "10. ... The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."

(emphasis supplied)

32. Admittedly, Respondent No. 2 did not set up the case of financial capacity in the reply to the notice when the cheques in question got dishonoured, no such averment regarding financial ability of the appellant was also made by Respondent No. 2 in his statement under Section 313 or 315 of the CrPC. In his statement under Section 313 of the CrPC, Respondent No. 2 has denied any legal liability towards the appellant and in in his statement under Section 315 of the CrPC he has merely stated that the cheques in question have been stolen by the appellant and that he came to know about the same only when he received a message from the banker, however, nowhere in the said statements has he questioned the financial ability of the appellant.

33. Moreover, Respondent No. 2 examined no independent material and led no evidence to showcase the inability of the appellant to extend the loan. In such circumstances, it was not the duty of the appellant to show that he had the financial capacity to advance the loan in question.

34. In the instant case, upon a consideration of the totality of circumstances, it is evident that Respondent No. 2 had failed to rebut the presumptions under Sections 118 and 139 of the NI Act, resultantly, the question of source of the loan advanced by the appellant and his financial capacity does not arise.

35. The onus cannot be said to be shifted on the complainant to prove his financial capacity merely because the accused makes a vague bald assertion. Merely denying liability does not suffice to dislodge the presumptions raised under Section 118 and 139 of the NI Act.

36. In terms of the dictum of the Hon'ble Apex Court in Bir Singh v. Mukesh Kumar : (2019) 4 SCC 197, mere admission of the signature of the drawer on the cheque is sufficient to activate the presumption under Section 139 of the NI Act. It is not a pre-requisite that the drawer must also admit the execution of the entire contents of the cheque.

37. Consequently, in terms of the dictum of the Hon'ble Apex Court in Rajesh Jain v. Ajay Singh (supra), the onus was on the accused/ Respondent No. 2 to raise a probable defence by either leading direct or circumstantial evidence to show that there existed no debt/liability in the manner as pleaded in the complaint. However, in the present case, it is seen that the accused had merely denied his liability by merely stating that the signed cheques were not issued by him, which is not sufficient to rebut the presumption raised in favour of the complainant/ appellant. It was noted that no complaint regarding theft of the said cheques was made by the accused. In that light, the learned MM erred in noting that Respondent No. 2 had been successful in raising a probable defence in his favour.

38. The onus was on the accused/ Respondent No. 2 to rebut the presumptions. It was not for the complainant/ appellant to establish that he had the means to advance the loan, or that the signed cheques were issued in discharge of any legally enforceable debt. Having failed to rebut the presumptions, the contention of Respondent No. 2 that the burden was on the appellant to establish his financial means do not bolster the case of the complainant.

Conclusion

39. In view of the foregoing discussion, this Court is of the opinion that the accused/ Respondent No. 2 failed to rebut the presumptions raised against him under Sections 139 and 118 of the NI Act.

40. The impugned judgment dated 30.08.2019, acquitting Respondent No. 2 of the offence under Section 138 of the NI Act is accordingly set aside.

41. List on 01.05.2025 for further directions. Respondent No. 2 is directed to be present on the next date of hearing.

42. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J APRIL 1, 2025