

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Revision No. 3165 of 2013 (O&M)
Date of Decision: 20.4.2015**

Darshan Singh Bhullar

.....Petitioner

Vs.

M/s Gupta Feed Store through its Proprietor Sh. Yogesh Gupta

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Saurav Khurana, Advocate
for the petitioner.

Mr. H.S.Thiara, Advocate
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Present criminal revision petition is directed against the impugned judgment dated 19.9.2013, passed by the learned Additional Sessions Judge, Kapurthala, whereby appeal of the petitioner against the judgment of conviction and order of sentence of even date, i.e. dated 12.3.2012, passed by the learned Sub Divisional Judicial Magistrate, Phagwara, was dismissed, upholding the conviction and sentence of the petitioner, for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short).

Briefly put, relevant facts of the case are that respondent-

complainant M/s Gupta Feed Store, through its Proprietor Yogesh Gupta filed a complaint against the petitioner Darshan Singh Bhullar under Section 138 of the NI Act. It was alleged in the complaint that accused was having business dealings with the complainant and with a view to discharge his existing liability, accused issued a cheque bearing No. 876764 dated 20.9.2005 for an amount of ₹9 lacs drawn at Canara Bank, Banga, in favour of the complainant with the assurance that the said cheque will be duly honoured and encashed. However, when the complainant presented the cheque through his bankers, the same was dishonoured by the bankers of accused, vide memo date 29.12.2005. The complainant brought this fact to the notice of accused. It was further averred by the complainant that thereafter, the accused made payment of ₹50,000/-, out of the abovesaid amount of ₹9 lacs. The accused-petitioner issued another cheque bearing No. 876780 dated 15.6.2006 for the remaining amount of ₹8,50,000/- drawn at Canara Bank in favour of the complainant, with the assurance that the said cheque will be duly honoured and encashed on its presentation.

On presentation of the abovesaid cheque by the complainant through his bankers at Phagwara, the same was sent to the accused but the said cheque was dishonoured with the remarks 'Account Closed', vide memo dated 19.6.2006. This cheque was returned to the banker of the complainant who returned the same to the complainant vide memo No. 24.6.2006. After receiving the said information, complainant came to know that accused had intentionally played a fraud on him and got his account closed,

because accused was having no funds in his accounts, which shows malafide intentions of the accused. Thereafter, the complainant issued a legal notice dated 17.7.2006, which was dispatched on 19.7.2006 to the accused, vide registered post as well as UPC, calling upon the accused to make payment of amount of the cheque, within a period of 15 days from the date of receipt of notice. Accused refused to receive the notice on 22.7.2006. However, notice sent through UPC stood delivered to the accused, but he failed to comply with the notice and did not make payment, thus, he committed an offence punishable under Section 138 of the NI Act.

The complainant-respondent produced preliminary evidence and on perusal thereof, accused was summoned to face criminal trial, for an offence under Section 138 of the NI Act, vide order dated 2.11.2006 passed by the learned JMJC, Phagwara. Pursuant to the summoning order, accused appeared in the Court. A prima facie case was found against him for commission of offence under Section 138 of the NI Act and accordingly, charge was framed against him.

With a view to prove his case, complainant-Yogesh Gupta himself stepped into witness box as CW-1. He also examined Mangat Ram Saxena, Bank Officer of Dena Bank as CW2. After producing documentary as well as oral evidence, complainant closed his evidence. All the incriminating evidence brought on record by the complainant was put to the accused, while recording his statement under Section 313 of the Code of Criminal Procedure ('Cr.P.C.' for short). Accused pleaded innocence and alleged false implication.

However, despite having been afforded opportunity, accused-petitioner herein, did not produce any evidence in his defence.

Having heard the learned counsel for the parties and after going through the evidence brought on record of the case, learned trial court recorded cogent findings on each and every relevant aspects of the matter. Learned trial court arrived at a judicious conclusion, dealing with the peculiar facts and circumstances of the case, as well as relevant provisions of law, besides, the judicial precedents applicable thereto. Learned court held that the complainant has duly proved his case, by leading cogent and convincing evidence, which has gone completely un rebutted by the accused. Accordingly, accused was held guilty and convicted for the offence under Section 138 of the NI Act, vide impugned judgment of conviction dated 12.3.2012.

Thereafter, convict was heard on quantum of sentence and he was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5,000/- In default of payment of fine, convict was ordered to further undergo RI for a period of one month, vide impugned order of sentence dated 12.3.2012. Dissatisfied, petitioner filed his appeal before the learned Sessions Judge, which also came to be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 19.9.2013.

Feeling aggrieved against both the impugned judgments and order of sentence, petitioner has approached this Court by way of instant criminal revision petition.

Notice of motion was issued.

Learned counsel for the petitioner submits that both the learned courts below have proceeded on a misconceived approach and failed to appreciate the fact that the complainant failed to establish as to who was the proprietor of the complainant firm. The next argument raised by the learned counsel for the petitioner was that the cheque in question, was dishonoured only on account of closure of bank account and not because of insufficient funds. The last and final argument raised by the learned counsel was that complainant was not having justified cause in his complaint, in the absence of any legally enforceable debt.

To buttress his arguments, learned counsel for the petitioner, relies on the following judgments:-

1. K. Prakshan Vs. P.K.Surenderan, 2008 (1) SCC 258
2. Millind Shripad Chandurkar Vs. Kalim M. Khan and another, 2011 (4) SCC 275
3. Rev. Mother Marykutty Vs. Reni C. Kottaram and another, 2013 (1) SCC 327
4. Vijay Vs. Laxman and another 2013 (3) SCC 86
5. Lakshmi Srinivas Savings and Chit Funds Syndicate Pvt. Limited Vs. S. Bhojarajan 2007 (1) RCR (criminal) 907 (Madras High Court).

He prays for allowing the present petition, by setting aside the impugned judgments.

Per contra, learned counsel for the respondent submits that none of the judgments cited by the learned counsel for the petitioner applies to the facts of the present case. He further submits that petitioner never denied the liability of the cheque in question and he issued the cheque to discharge his existing financial liability. He also

submits that entire case of the petitioner was based only on technicalities. This was the reason that learned counsel for the petitioner did not address anything on merits. He concluded by submitting that both the learned courts below have rightly appreciated the true fact situation of the case, by recording well convincing findings, because of which, the impugned judgments deserve to be upheld. He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, present one has not been found to be is a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

There is no denying the fact that statutory presumption, as envisaged under Section 139 of the NI Act, is against the accused-petitioner herein. The said statutory presumption under Section 139 of the NI Act, includes the existence of a legally enforceable debt or liability. Once the complainant makes out a prima facie case of cheque bouncing, while discharging his initial burden, the onus immediately shifts on to the accused to disprove the allegations against him, by leading sufficient and reliable evidence. In the cases of offence under Section 138 of the NI Act, the complainant is not required to prove the case beyond reasonable shadow of doubt, nor

it is the requirement of law, like in other criminal trials dealing with the offences under the IPC.

Initial burden on the complainant is also only a limited one. By leading his evidence on the facts available on record, complainant is required to make out a prima facie case of cheque bouncing against the accused. Thus, it is an exception to the general rule. Thereafter, onus would shift and the accused would have to rebut the statutory presumption against him, by bringing on record cogent evidence in his defence. It is the only harmonious construction of the Sections 138 and 139 of the NI Act. Any contrary interpretation would run counter to the legislative intent and would defeat the very object of the unambiguous provisions of law.

It is a matter of record that in the present case, the accused-petitioner did not lead any evidence in his defence. When a pointed question was put to the learned counsel for the petitioner, as to how the petitioner rebutted the statutory presumption against him, he had no answer and rightly so, because it was a matter of record. In fact, as recorded by both the learned courts below, petitioner did not lead any evidence at all, in his defence. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error either on facts or in law, while passing the impugned judgments, as well as the impugned order of sentence and the same deserve to be upheld, for this reason also.

Since the learned counsel for the petitioner had, as a matter of fact, nothing substantial to argue on merits, all of his above three arguments have been found based on technicalities alone. Petitioner

has never disputed his existing financial liability and for discharging the same, he issued the cheque in question.

So far as the first argument raised by the learned counsel for the petitioner is concerned, both the learned courts below have discussed in detail on this aspect and recorded their respective cogent findings, to the effect that it was duly established that witness CW-1 was the proprietor of the complainant firm, who has duly signed the complaint. Sh. Yogesh Gupta, proprietor of the complainant firm, has been rightly found to be holder of the cheque in question, in due course. Further, petitioner did not lead any defence evidence. Under these circumstances, first argument raised by the learned counsel for the petitioner has been found bereft of any merit and the same is not worth acceptance.

So far as the second argument raised on behalf of the petitioner that cheque in question was dishonoured only because of closure of bank account and not because of insufficient fund, is concerned, the same is to be noted to be rejected. It is so said, because closure of the bank account will not discharge the accused from his financial liability. On the other hand, it makes offence more serious for the reason that malafide intention of the accused gets disclosed, particularly when there is no defence evidence available on record. There are more than one direct judgments of the Hon'ble Supreme Court against the petitioner on this point, which will be referred to later. Thus, the second argument raised by the learned counsel for the petitioner also falls flat, having been found without any substance.

Coming to the third argument raised by the learned counsel for the petitioner, that petitioner was not under legally enforceable debt, it would suffice to reiterate here that statutory presumption also includes the existence of legally enforceable debt, as noticed hereinabove. It is neither pleaded nor argued case on behalf of the petitioner that petitioner was either an uneducated or simpleton person, who was misled or induced by the complainant. In this view of the matter, it can be safely concluded that petitioner issued the cheque in question with a view to discharge his existing liability.

Issuing the cheque in question by the petitioner from that bank account which already stood closed, would reflect his malafide intention, because at the time of issuance of the cheque, account was operative and the petitioner closed the same immediately thereafter. The gravity of fact situation would remain the same. In either of the two situations, it was malafide intention of the petitioner. Therefore, it is unhesitatingly held that the petitioner has got no case either on facts or in law and the impugned judgments deserve to be upheld, for this reason as well.

Coming to the judgments relied upon by the learned counsel for the petitioner, there is no dispute about the law laid down therein. However, on close perusal thereof, none of the cited judgments has been found of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world

of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

The abovesaid view taken by this Court, on the statutory presumption as well as dishonour of the cheque due to closure of bank account, finds support from the following judgments of the Hon'ble Supreme Court and different High Courts, including of this Court.

1. NEPC Micon Ltd. Vs. Magma Leasing Ltd, 1999 AIR (SC) 1952
2. M/s Laxmi Dychem Vs. State of Gujarat and others, 2012 (13) SCC 375
3. Salim Vs. Thomas 2004 (2) RCR (Crl) 341 (Kerala H.C.)
4. C. Keshavamurthy Vs. H.K.Abul Zabbar 2013 (4) RCR (civil) 15
5. Rangappa Vs. Mohan 2010 (3) RCR (criminal) 164
6. Hiten P. Dalal Vs. Bratindranath Banerjee 2011 (3) RCR (criminal) 460
7. K.N.Beena Vs. Muniyappan, 2001 (4) RCR (criminal) 545
8. Harbhajan Singh Ahuja Vs. Sukhdev Singh and another, 2012 (1) RCR (criminal) 163.
9. Rajendran D.K. Vs. P.K.Sajeendran and another 2009 (3) ILR (Kerala) 913
10. Vijay Kumar Gupta Vs. M/s R.S.Traders 2005 CriLJ 3860 (J&K High Court)

The relevant observations made by the Hon'ble Supreme Court in para 13 to 15 of its judgment in Rangappa's case (supra), which can be gainfully followed in the present case, read as under:-

*“With regard to the facts in the present case, we can also refer to the following observations in **M.M.T.C. Ltd. and Anr. v. Medchl Chemicals & Pharma (P) Ltd.**, (2002) 1 SCC 234 (Para. 19):*

“... The authority shows that even when the cheque is dishonoured by reason of stop payment instruction, by virtue of Section 139 the Court has to presume that the cheque was received by the holder for the discharge in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the ‘stop payment’ instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there was sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused. ...”

(emphasis supplied)

*14. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in **Krishna Janardhan Bhat** (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in*

that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable

defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

15. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the

construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant.

There is a limited scope to interfere, at the hands of this Court, while exercising its revisional jurisdiction. The similar issue fell for consideration of this Court in **Harbhajan Singh Ahuja's** case (supra). The observations made by this Court in para 13 to 15 of the judgment, aptly apply to the present case and the same read as under:-

“Interference could be made only if the judgment is based on mis-appreciation of evidence after ignoring some material evidence; misinterpretation of law and misreading of evidence or when the judgment is palpably wrong, perverse and suffers from manifest illegalities and infirmities.

*Law does not require re-appreciation of evidence at the revisional stage. It was observed by the Apex Court in the judgment delivered in **Duli Chand Vs. Delhi Administration** AIR 1975 SC 1960, that the High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding of fact*

reached by the learned Magistrate and the learned Additional Sessions Judge was correct.

*While further elaborating the scope of interference by the High Court in exercise of revisional jurisdiction in case of **Vimal Singh Vs. Khuman Singh & Anr.** (1998) 7 SCC 223, Hon'ble **Crl.Rev No.960 of 2011** 6 Supreme Court held that the interference by the High Court in exercise of revisional jurisdiction is limited to the exceptional cases viz. (i) when it is found that order under revision suffers from glaring illegality or has caused miscarriage of justice; (ii) When it is found that trial court has no jurisdiction to try the case; (iii) Where trial court has illegally shut out the evidence which otherwise ought to have been considered and (iv) Where material evidence which clinches the issue has been overlooked. (AIR 1962 SC 1788 relied).....*

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as different High Courts, in the cases referred to hereinabove, it is held that learned courts below have committed no error of law, while passing the impugned judgments. Further, during the course of hearing, learned counsel for the petitioner failed to point out any jurisdictional error or patent illegality in either of the impugned judgments, so as to convince this Court to take a different view than the one taken by the learned courts below. Thus, the impugned judgments deserve to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the

case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with abovesaid observations made, present criminal revision petition stands dismissed, however, with no order to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

20.4.2015
Ak Sharma