

CRR-2594-2014

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

**CRR-2594-2014 (O & M)
Date of Decision:03.03.2015**

Balbir Singh

... Petitioner(s)

Versus

Raj Krishan

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- | | |
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| 1) Whether Reporters of the local papers may be allowed to see the judgment ?. | YES |
| 2) To be referred to the Reporters or not ?. | YES |
| 3) Whether the judgment should be reported in the Digest ? | YES |

Present: Mr. Neeraj Madaan, Advocate,
for the petitioner.

Mr. Peeush Gagneja, Advocate,
for the respondent.

Paramjeet Singh, J.

The genesis of factual matrix lies over a dispute between a commission agent (respondent-complainant) and a farmer (petitioner-accused) which ended up in filing of a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'N.I.Act'). Now-a-days, the people prefer to carry and execute a small piece of paper called cheque than the currency worth of cheque. The N.I.Act is a promptitude remedy to keep a close watch on the economic offence of cheating a person to whom a cheque is issued towards discharge of a debt.

Present criminal revision has been preferred by the petitioner

CRR-2594-2014

against judgment dated 19.05.2014 passed by the Additional Sessions Judge, Fazilka, thereby dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 20.03.2012 passed by the Judicial Magistrate Ist Class, Abohar, vide which the petitioner has been convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'N.I.Act') and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 2,500/-, in default to undergo simple imprisonment for one month.

In nutshell, the case set up by the complainant as emanating from the record is to the effect that he was doing the business of commission agent at Abohar under the name and style of M/s Sidana Traders and he is the sole proprietor of his business. The complainant maintains true, proper and regular account books in the ordinary course of his business and strikes balance daily. The complainant advances loan to such agriculturalists, who sell or promise to sell their agricultural produce through him and interest is charged as per prevalent rate in the area of Mandi Abohar. The petitioner-accused used to sell the crop through the complainant and he has created a separate account in his name in the account books of complainant showing debit/credit entries as per dealings with the parties. Allegedly, on 26.05.2004, the petitioner visited the shop of complainant and after going through his account and understanding the entries and outstanding balance towards him,

CRR-2594-2014

gave post dated cheque bearing No.220614 dated 30.11.2004 for ₹ 9,45,000/- in discharge of recoverable debt out of his account No.4483 with Punjab National Bank in favour of the complainant and assured that the cheque amount will be paid by the bank on presentation of the same by the complainant. On 30.11.2004, when the complainant presented the said cheque, it was returned back by the petitioner's banker on the ground of "Insufficiency of Funds" in the account of petitioner vide cheque return memo dated 03.12.2004, which was intimated to the complainant on 08.12.2004. The complainant approached the petitioner on 08.12.2004 and requested him to pay the cheque amount. The petitioner-accused was also served with legal notice dated 15.12.2004 vide which specific demand of ₹ 9,45,000/- was made. The accused received the legal notice but paid nothing to the complainant. Therefore, the complaint was filed.

On the basis of preliminary evidence, notice of accusation for commission of an offence punishable under Section 138 of the NI.Act was served upon the petitioner-accused to which he pleaded "not guilty" and claimed trial.

To prove his case, the complainant himself stepped into the witness-box as PW 3 besides examining Ved Parkash, Clerk, Punjab National Bank as PW 1, Ashok Kumar, Clerk, Canara Bank as PW 2.

Statement of the accused was recorded under Section 313 Cr.P.C. The accused denied all the incriminating circumstances

CRR-2594-2014

appearing against him in the complainant's evidence and claimed to be innocent. In his defence, the accused examined Naveen Kumar, Clerk, Market Committee as DW 1 and Nachattar Singh as DW 2 and thereafter closed his defence evidence.

Vide impugned judgment of conviction and order of sentence dated 20.03.2012, the trial Court convicted and sentenced the petitioner-accused as aforesaid. Against that, the petitioner preferred an appeal before the lower Appellate Court which has been dismissed vide impugned judgment dated 19.05.2014. Hence, this criminal revision.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that relationship between the petitioner-accused and respondent-complainant was of commission agent and farmer. The petitioner is an illiterate farmer and he only thumb marks. Learned counsel further contended that the petitioner used to sell his crop to the complainant and by taking the advantage of his dominating position, the complainant had obtained thumb impressions of the complainant and fabricated the same. It is also admitted by the complainant that the petitioner had allegedly settled the account on 26.05.2004 and given the post dated cheque dated 30.11.2004 in the discharge of his legally recoverable debt. Learned counsel further contended that mere statement of account (Ex.P-23) submitted by the complainant is of no value unless it is supported by documentary evidence in the shape of account books, rokar and *khata*

CRR-2594-2014

etc. The complainant has not brought any documentary evidence on the record as to how much amount has been advanced and on which dates. Once the details are not mentioned in the complaint, the petitioner was not in a position to rebut the same. In fact, from reading of the complainant, the alleged accused (petitioner) became aware of the allegations and prosecution story set up against him. In this case, the contents of complaint do not disclose details and dates of transaction of selling of crop etc. and settlement between the parties thereafter and how the amount was calculated in the statement of alleged account. There is no presumption of truth attached to the account statement unless it is proved in accordance with law. It is admitted in his cross-examination by the complainant that entry no.23 and other entries have not been thumb marked by the petitioner, rather signed by one Bhupinder Singh, not petitioner to whom amount is alleged to have been paid on behalf of the petitioner. It is the case of the petitioner that the complainant had fabricated the documents by taking advantage of his dominating position. Even some of the entries made by the complainant in his account books are not bearing the signatures/thumb impressions of the petitioner.

Learned counsel for the petitioner further contended that it is admitted in the complaint that the complainant used to advance loan to such agriculturists, who sell or promise to sell their agricultural produce through him and interest was charged as per the prevalent rate in the area of Mandi Abohar, therefore, the complainant was required to have a

CRR-2594-2014

licence under the Punjab Registration of Money-Lender's Act, 1938. (hereinafter to be referred as "the Money-Lender's Act").

Learned counsel for the petitioner further contended that blank cheque was given to the complainant as a security and the same has been misused by the complainant. This fact has also been mentioned in the legal notice dated 17.01.2005. Learned counsel further contended that complete details on the basis of which alleged liability is alleged against the petitioner have not been mentioned even in the legal notice. There is complete misreading of evidence on record and complete non-application of mind by the courts below with regard to the legal proposition. The petitioner has rebutted the presumption raised under the provisions of the N.I.Act. Learned counsel further contended that findings have been recorded by the courts below in a casual manner and without taking into consideration the value of account statement brought on record. In support of his contentions, learned counsel for the petitioner has relied upon *Narsi Dass vs. Surender* 2015 (1) RCR (Criminal) 104.

Per contra, learned counsel for the respondent has vehemently opposed the contentions of learned counsel for the petitioner and supported the concurrent findings recorded by the courts below. Learned counsel further contended that the petitioner cannot raise a plea for the first time before this Court that the respondent is not having any licence under the Money-Lender's Act. In support of his contentions, learned counsel has relied upon *Hiten P. Dalal vs. Bratindranath Banerjee*

CRR-2594-2014

2001 (3) R.C.R. (Criminal) 460.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties.

It is expedient to have a bird's eye view of the evidence led by the complainant hereunder:

(i) PW 1 Ved Parkash, Clerk, Punjab National Bank, was produced by the complainant. He deposed that Balbir Singh is having saving account No.4483 in the bank. He produced the attested copy of account opening form of accused as Ex.P-1, copy of specimen signatures as Ex.P-2, attested copy of cheque book issue register as Ex.P-3 and relevant entry as Ex.P-4 vide which Balbir Singh had put his signatures in respect of receiving the cheque book. He also produced the cheque in dispute as Ex.P-5 which was dishonoured due to insufficiency of funds. The said cheque was returned vide memo Ex.P-6. He also proved the certified copy of cheque presenting register as Ex.P-7 and account statement of Balbir Singh as Ex.P-8.

(ii) PW 2 Ashok Kumar, Clerk, Canara Bank deposed that M/s Sidana Traders is having account in the bank. The cheque Ex.P-5 was presented in the bank on which seal of the bank was appended which is Ex.P-9.

CRR-2594-2014

The cheque was dishonoured and returned vide memo Ex.P-6. He also proved the account statement as Ex.P-10 and relevant entry i.e. date of cheque return Ex.P-10/A. He also deposed that vide Ex.P-11, the bank debited ₹ 1694/- from the account of the complainant due to dishonour of the cheque.

(iii) Complainant himself stepped into the witness-box as PW 3 and reiterated the contents of complaint. He also produced the original cheque as Ex.P-5, cheque return memo as Ex.P-6, carbon copy of notice as Ex.P-13, postal receipt as Ex.P-14, UPC as Ex.P-15, acknowledgment as Ex.P-16 and statement of account of the accused in ledger book as Ex.P-17.

It is also necessary to have a bird's eye view of the defence evidence hereunder:

(i) The accused examined Naveen Kumar, Clerk, Market Committee as DW 1, who produced the summoned record regarding auction for the year 2003-04. He further deposed that the register is maintained by the Market Committee, Abohar as per rules and whatever agricultural produce is brought by an agriculturist, the same is sold in open auction and entry is made regarding the same in the said register. The name of agriculturist,

CRR-2594-2014

name of purchasing agency and name of agency of the commission agent and the price for which the produce is sold, is entered in the said register. He proved the attested copies of register brought by him as Ex.DW 1 to Ex.DW 53.

(ii) Nachattar Singh was examined as DW 2, who deposed that he knew Balbir Singh and Raj Krishan Sidana as Balbir Singh was agent of Raj Sidana and they sold their produce to Raj Krishan Sidana through Balbir Singh. He further deposed that in the seasons of wheat and cotton crops, he sold his agricultural produce to the agency of Raj Sidhana but later on he came to know that Raj Krishan Sidana had committed a cheating. When they approached Raj Krishan Sidana for setting their account, he stated that they could settle their account with Balbir Singh. He further deposed that Balbir Singh son of Wanzar Singh never received any amount from the complainant. He also deposed that whenever he sold his produce with Raj Krishan Sidana, then Raj Krishan used to take his signatures in the account books.

Before dealing with contentions raised by learned counsel for the parties, it would be appropriate to reproduce the relevant provisions.

Sections 118 (a) and 139 of the N.I.Act read as under:

CRR-2594-2014

“118. Presumption as to negotiable instruments.- Until the contrary is proved, the following presumptions shall be made

(a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;”

“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, of any debt or other liability.”

The provisions of the N.I.Act lay down that initially, the complainant has to prove the existence of debt and other liabilities and thereafter the burden shifts upon the accused to prove that the cheque was not issued towards discharge of a lawful debt but was issued by way of security or any other reason on account of some business transaction or was obtained unlawfully.

Admittedly, the respondent is doing the business of commission agent under the name and style of M/s Sidana Traders and used to advance loan to such agriculturists, who sell or promise to sell their agricultural produce through him and interest was charged as per prevalent rate in the area of Mandi Abohar. The loan was allegedly advanced by the complainant to the accused and it was stated to have been entered in the account books/*bahi* entries. No cogent evidence has

CRR-2594-2014

been brought on record relating to previous entry and agricultural produce sold by the petitioner and on which date loan was advanced by means of account books. Even the complainant admitted that entry Ex.P-23 is not bearing the signatures of the petitioner. The version of complainant that the amount stated in Ex.P-23 was paid to Bhupinder Singh on behalf of the petitioner upon his telephonic request, is not acceptable, as such the alleged acknowledgment has no sanctity in the eyes of law. So far as the finding of courts below that last entry has been attested by the petitioner is of no consequence because whenever a farmer goes to a commission agent, former always feels influenced by the social and economic status of the latter. It is common practice that the farmer puts his signatures/thumb impressions on blank papers/cheques on the asking of the commission agent. Perusal of Vakalatnama filed on behalf of the petitioner in this petition reveals that petitioner puts thumb impressions, not signatures. In the complaint, there is no averment even remotely referring as to how and when, on what date and how much amount was advanced as loan by means of account books/bahi. With regard to the relevancy and evidentiary value of bahi entry/account books and nature of entry executed in 'bahi', this Bench in RSA No.1892 of 1986, titled '**Dhup Singh vs. Pheru and others**' decided on 09.01.2014, has held as under:

“To appreciate the controversy involved in present case in proper perspective, following points are required to be considered.

CRR-2594-2014

1. *The relevancy and evidentiary value of an entry in 'bahi'.*
2. *The nature of an entry executed in 'bahi' and consequential application of provisions of Stamp Act, 1899 and Negotiable Instruments Act, 1881.*

In so far as the first point relating to relevancy and admissibility of 'bahi' entry in evidence is concerned, undoubtedly, as per section 34 of the Evidence Act, 1872 (in short "the Act") the entries in account books regularly kept in course of business are relevant piece of evidence and admissible. However, such entries cannot be the sole basis of fixing liability on any person. Section 34 of the Act reads as under:

"Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability".

*An entry to be admissible in evidence under Section 34 of the Act, must be shown to be in a book, that book must be a book of accounts and that account must be one regularly kept in the course of business. The term book may properly be taken to signify ordinarily a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. A book which merely contains entries of items of which no account is made at any time, is not a book of account for the purpose of Section 34. The legislature did not intend to include in that category any record in which there is no process of reckoning. Reference in this regard may be made to **Central Bureau of Investigation v. V.C. Shukla** 1998(3)*

CRR-2594-2014

SCC 410, Mukundram v. Dayaram AIR 1914 Nag 44 and Mahasay Ganesh Prasad Ray and another v. Narendra Nath Sen and others AIR 1953 SC 431.

Whereas, Section 34 of the Act specifically renders admissible, the entries in account books, which would include 'bahi', nevertheless, the law insist on corroborative evidence of the same in order to charge a person with liability. The provision in itself ensures that a creditor may not have undue advantage over the debtor by forging or tampering with the entries in the 'bahi' especially when significant proportion of debtors is illiterate. However, if the entry in a 'bahi' is corroborated with other independent evidence, liability can be safely imposed on the debtor. In this context it would be useful to quote from the judgment of Hon'ble Supreme Court in V.C. Shukla (supra), wherein the court held as under:

"From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed".

CRR-2594-2014

*Reference can also be made to **Ishwar Dass Jain (Dead) through LRs v. Sohan Lal (Dead) through LRs** 2000 (1) RCR (C) 168 SC, **Chandradhar Goswami and Ors. V. Gauhati Bank Ltd.** AIR 1967 SC 1058, **Hiralal-Mahabir Pershad v. Mutsaddilal-Jugal Kishore** 1967 (1) ILR (Punjab) 435 and **Abdul Haq and Ors. v. Firm Shivji Ram-Khem Chand** AIR 1922 Lah 338.*

*Recently in **Gian Chand Brothers and Another v. RattanLal @ Rattan Singh** 2013 (1) RCR (C) 961, the Hon'ble Supreme Court in view of the admitted fact that books of account were regularly kept in course of business held that they should not have been rejected without any kind of rebuttal or discarded without any reason. This case however, cannot be said to be laying down a universal rule of correctness of account books in all circumstances; rather considering the peculiar facts of the case, the court came to a conclusion that mere denial of signatures by defendant and consequential non examination of handwriting expert by the plaintiff is not sufficient to rebut the presumption of correctness of entries in account book.*

Thus the explanation to first point raised above is found in Section 34 of the Act, 1872 itself which has been interpreted by the court in consistent manner as discussed herein above.

Coming to the second point, to determine the nature of entry as to whether it is merely a balance of account, bond, agreement, acknowledgment or a promissory note is another significant aspect involved in cases of recovery based on entry in 'bahi'. Once nature of entry is determined then it has to be seen whether it was required to be stamped or not. In case yes, then it has to

*be properly stamped as per the Stamp Act, 1899 or else it is rendered inadmissible in evidence. Primarily nature of the entry has to be decided on the basis of intention of the parties gathered from phraseology used and surrounding circumstances. It has been observed by Full Bench of Lahore High Court in **Firm Shiv Ram Punnan Ram through Shiv Ram and Punnun Ram v. Faiz** AIR 1942 Lah 50 that, the question whether the various entries with respect to balances struck by the defendant in plaintiff's 'bahi' from time to time are to be classed as acknowledgments, agreements or bonds for the purposes of duty chargeable under the Stamp Act has to be decided on the basis of the language used. As pointed out in the Full Bench ruling **Nanak Chand v. Fattu** A.I.R. 1935 Lah. 567, it is the phraseology used and not the legal implications following from it that determines the duty chargeable on such cases. In **Ganga Jal v. Lal Chand**, 1970 PLR 28, this High court came to conclusion that the entry in dispute was not required to be stamped as it was made only as an acknowledgment of the correctness of account and was not intended to supply an evidence of debt so as to fall within the mischief of Article 1, Schedule 1 of the Stamp Act. The court drew support from judgment of Andhra Pradesh High Court in **Dadi Musali Naidu v. Budda Veeru Naidu**, AIR 1958 AP 88, wherein it was held that a mere signature in a running account is not evidence of the debt of which there is already evidence in the account book and is in fact just an acknowledgment of the correctness of the account not required to be stamped.*

*In **Udey v. Ram Kishan** 2000(2) PLR 179, the question before this High Court was whether the 'bahi' entry was a bond. Considering the material before it the*

CRR-2594-2014

court observed:

The Bahi entry though is attested by two witnesses but there is no express obligation to pay the amount mentioned therein. The definition of bond in clause (b) of sub-section (5) to Section 2 of the Act requires that a person should oblige himself to pay money to another. In other words, there must be an express obligation to pay. No instrument can be a bond within the meaning of Section 2(5)(b) of the Act unless it is one which itself creates an obligation to pay money. The document admitting receipt of money in absence of express promise to pay, may be held to be a receipt but not a bond. The writing in question does not show that the defendant had undertaken any obligation to pay. More so, no such obligation can be inferred from mere acknowledgement of the receipt of the amount.

Thus, where an entry is merely a balance of account and signatures of defendant thereon are only intended to accept correctness of such balance then no stamp duty is required to be affixed. Such entry is relevant as per Section 34 of the Act. On the other hand if the entry is executed in nature of bond, acknowledgment of debt etc, it has to be stamped as per the Stamp Act, 1899.

Besides this, the question as to whether the 'bahi' entry qualifies to be a promissory note under the Negotiable Instruments Act, 1881 has also arisen before the courts. Needless to say that once a 'bahi entry' qualifies being a promissory note it will attract the presumptions attached to a negotiable instrument under the Act most important being that it is made, drawn, accepted or endorsed for consideration. In such scenario the burden of proof shifts to the debtor. In this way if a 'bahi entry' is accepted to be promissory note, then it would tend to dilute the effect of Section 34 of the Act, that an entry in account book by itself is not sufficient to

CRR-2594-2014

*charge a person with liability. Thus whenever, a person seeks to recover an amount on the basis of 'bahi entry' which is purported to be shown as a promissory note court must ensure that it satisfies the test of being a promissory note and it is properly stamped as per the Stamp Act. Most importantly, the parties involved must be shown to have intended it to be as such. Satisfaction of court to this effect is very crucial in the prevailing social conditions where unscrupulous moneylenders are often found to be exploiting unfortunate debtors. The issue whether a 'khata' involved in the case was a promissory note came up before Division Bench of Rajasthan High Court, in **Chiranjilal and Ors. v. Ramnath and ors.** AIR 1953 Raj 211. The court after considering various English authorities and judgments of other Hon'ble High Courts observed as under:*

"Thus, on the authorities cited by the learned counsel for the appellants, we need not be embarrassed by the portion of document containing a promise to pay. It is permissible to consider carefully every part of the document and also to examine surrounding circumstances in order to find out whether the document is a promissory note or not.

It would appear from the language of the document given above that it was primary intention of the parties that a balance of previous account be struck in the khata of the debtor in the account books of the creditor. A certain rate of interest was also recorded in order to save any dispute about the rate. This khata was stamped with one anna stamp, which, according to the law prevailing in Jaipur at that time, was chargeable on acknowledgment. A promissory note for an amount above Rs. 250/- was chargeable with a stamp duty of /2/-. Neither in the khata nor in the plaint is the document described to be a promissory note. The parties cannot be said to have intended that

the document would be negotiable. On a careful consideration of the language of this document and the authorities cited on behalf of the plaintiffs, we are of opinion that the parties did not intend that the document in question should operate as a promissory note. All that they intended was to furnish an evidence of the balance due against the debtor with stipulation to pay interest at a certain rate. Considering the entire circumstances of the case, we are not prepared to hold the document to be a promissory note simply on account of the words about payment having found place towards the end of the document.”

In Raghunath Prasad v. Mangi Lal AIR 1960

Raj 20, an entry in ‘bahi khata’ was not accepted to be a promissory note for reasons that it did not specify the rate of interest; therefore was not certain as required under section 4 of the Negotiable Instrument Act, 1881 and being executed in ‘bahi’ it was not ‘Negotiable’. The court observed:

“By virtue of definition of the negotiable instruments contained in Section 13 a promissory note payable to order or to bearer is a negotiable instrument. If the defect of non-specification of rate of interest in the document in question is ignored it should have been negotiable to be a promissory note.

But being executed in a Bahi, it cannot be taken out of it without tearing the leaf and it cannot be transferred in order to be negotiable under Section 14 of the Negotiable Instruments Act. Here then is a document which satisfies all the ingredients of the definition of promissory note under Section 4 of the Negotiable Instruments Act but which the parties never intended to be negotiable by delivery. Such document cannot be a promissory note within the meaning of the Negotiable Instruments Act.”

Thus, an entry executed in ‘bahi’ cannot per se be a promissory note as it does not fulfil the criteria of ‘Negotiability’ which is the essence of any Negotiable

CRR-2594-2014

Instrument.

A Coordinate Bench of this Court in *Narsi Dass's case* (*supra*) has also taken the similar view and held as under:

“11. What cannot possibly be disputed here is that such Bahi entries are not the instruments of advancement of loan like pronote, bonds or Bill of exchange etc., which can legally be enforced, as recognized in the NI Act. These entries are only relevant u/s 34 of The Indian Evidence Act, 1872, that too, in case, the same were kept regularly in the course of business. At the same time, such Bahi entries must be kept in conformity with some known system of accountancy, either in the official language or customary language well known to the parties and not otherwise. Where the books produced in a case are merely ledgers, these are not supported by any daybook or roznama, do not contain entries of transactions and there is no daily opening or closing balance, the same are meaningless. Therefore, such Bahi entries cannot and indeed should not be taken to be account book regularly kept in the course of business, as provided u/s 34 of The Indian Evidence Act, in view of ratio of law laid down by the Assam High Court in case *Chandi Ram Deka v. Jamini Kanta Deka* **1952 AIR (Assam) 92** and Orissa High Court in case *Hira Meher and another v. Birbal Prasad Agarwala* **1958 AIR (Orissa) 4** and are not at all legally enforceable.

12. Not only that, it is now well settled principle of law that an entry in the Bahi Khata merely is an admission by its maker in his own favour and it is only admissible in evidence if it is accepted by the opposite side (loanee) and not otherwise, which is entirely missing

CRR-2594-2014

in the instant case. Such entries shall alone be not sufficient to charge any person with liability, in view of ratio of law laid by Hon'ble Apex Court in case Chandradhar Goswami v. Gauhati Bank Ltd. AIR 1967 Surpeme Court 1058 and Rajasthan High Court in case Pit Ram Singh v. Vimla Devi 1992 AIR (Raj) 149.

13. *Moreover, it is a matter of very common knowledge that commission agents used to obtain such blank/undated cheques from the Farmers as a security in good faith, not in lieu of any legal liability, to which, the court can take judicial notice of it. Therefore, once it is ruled that such Bahi entries are not negotiable instruments of advancement of loan, such as, pronote, bonds and Bill of exchange etc., which can legally be enforceable, as contemplated by the NI Act, not alone sufficient to charge any person with liability and such cheques were issued as a security of the loan amount, then, the complainant was debarred from filing the complaint u/s 138 of the NI Act against the respondent.*

Following the law laid down in ***Dhup Singh's case (supra)*** and ***Narsi Dass's case (supra)***, it is held that account books/bahi entries are not the instruments of advancement of loan like pronote, bonds, or Bill of exchange etc. which can legally be enforced, as recognised in the N.I. Act. The entries in account books are only relevant under Section 34 of the Indian Evidence Act, but such statements shall not alone be sufficient evidence to charge any person with liability.

Another aspect of this case in the light of case set up by the complainant is that he used to advance loan to such agriculturalists, who

CRR-2594-2014

sell or promise to sell their agricultural produce through him and interest was charged as per prevalent rate in the area of Mandi Abohar. It means that the complainant was dealing in money lending business to the public at large, however, is not having the money lender's licence. It would be apposite to reproduce Sections 3 and 4 of the Punjab Money-Lender's Act, 1938:

“Suits and applications by money-lenders barred, unless money-lender is registered and licensed.

3. Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this act, be dismissed, unless the money-lender-

(a) at the time of the institution of the suit or presentation of the application for execution; or

(b) at the time of decreeing the suit or deciding the application for execution-

(i) is registered; and

(ii) holds a valid licence, in such form and manner as may be prescribed; or

(iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or

(iv) if he is not a registered and licensed money-lender, satisfies the Court that he has applied to

CRR-2594-2014

the Collector to be registered and licensed and that such application is pending; provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of license pending before the Collector is finally disposed of.

Registration of Money-lenders

4. Every money-lender may apply for registration of his name at the office of the Collector of the District; and his name shall be registered on furnishing such particulars as may be prescribed and on payment of a fee of Rs.5.”

The said sections provide that no money lender shall carry on the business of advancing loans unless he gets himself registered under sub-section (i). Any money lender, who contravenes these provisions, shall be liable on conviction to a fine not exceeding one thousand rupees for the first offence and two thousand rupees for every subsequent offence in this direction. As per the above referred provisions, a person is only competent to advance agricultural loan if he holds the valid licence/registration certificate under the provisions of the Punjab Money Lender's Licence Act, 1938. In the present case, the complainant is not having any such licence. Without having the aforesaid licence, the advancement of loan by the complainant to the petitioner-accused is not only illegal, but at the same time, he can also be prosecuted. The contention of learned counsel for the respondent that petitioner cannot raise a issue for the first time before this Court that the respondent is not

CRR-2594-2014

having any licence under the Money-Lender's Act, is not sustainable, as this is a legal issue and can be raised any any stage. It has been admitted by the respondent in the complaint that he used to advance loans to the agriculturalists, who sell or promise to sell their agricultural produce through him and interest was charged as per prevalent rate in the area of Mandi Abohar.

In *Narsi Dass's case (supra)*, it has also been held as under:

“14. Sequelly, there is yet another aspect of the matter, which can be viewed entirely from a different angle. The case set up by the complainant in his complaint was that he used to advance loan to the respondent for agricultural purpose from time to time and he was required to repay the loan along with interest at the rate of 24 per cent per annum. Not only that, he has also categorically acknowledged that he used to lend money on credit basis to different persons, but he did not possess any money lender's licence. That means, the complainant was engaged in money lending business to the public at large and did not possess the money lender's licence. Indisputably, The Punjab Registration of Money-lender's Act, 1938 (hereinafter to be referred as “the Money-lender's Act”) is applicable to the State of Haryana by substituting the word “Haryana” by means of Adaptation of Law Order 1968. Section 4(2) postulates that no money lender shall carry on the business of advancing loans unless he gets himself registered under subsection (1). Any money lender, who contravenes these provisions, shall be liable on conviction to a fine not exceeding one thousand rupees for the first offence and two thousand

rupees for entry subsequent offence in this direction.

15. *Likewise, Section 3 of the Act posits that notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan or an application by a moneylender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the money lender at the time of institution of the suit or presentation of the application for execution or at the time of decreeing the suit or deciding the application for execution is registered and holds a valid license, in such form and manner as may be prescribed, which is totally lacking in the present case in this relevant connection.*

16. *A conjoint and meaningful reading of the indicated provisions of social and beneficial legislation, would reveal that the complainant was only competent to advance agricultural loan if he holds the pointed valid licence/registration certificate. Having a money lender's license is a condition precedent to advance the loan to the Farmers. The advancement of loan by the complainant to the respondent without any valid licence is not only illegal, but, at the same time, he can be prosecuted u/s 4 of the Moneylender's Act as well. Similarly, this Court in case Manjit Kaur v. Vanita **2010(3) RCR (Criminal) 574** and Delhi High Court in case Prajan Kumar Jain v. Ravi Malhotra **2010(3) CivCC 410**, have categorically held that in case a cheque is issued for time barred debt and it is dishonoured, then, it cannot be termed to have been issued, in lieu of legal enforceable liability/debt within the meaning of section 138 of the NI Act.*

17. *Therefore, on the same analogy, once it is*

CRR-2594-2014

proved and the entire facts that the alleged Bahi entries are not negotiable instruments, which can be enforced, not alone sufficient to charge any person with liability, sequelly, the complainant was legally debarred to recover the alleged loan, as envisaged under the indicated provisions of the Money lender's Act and in view of such legal disabilities attached to the complaint, as discussed here-in-above, are put together, then, in that eventuality, to my mind, the conclusion is irresistible and inescapable that he (complainant) cannot adhere to initiate the criminal prosecution against the respondent within the meaning and in the garb of complaint u/s 138 of the NI Act.....”

As per the complainant, the petitioner had issued cheque for repayment of loan. However, there is no disclosure about the date of demand of loan and giving of loan in the complaint, itself. On the other hand, the petitioner-accused has taken the defence from the very beginning that blank cheque was given to the complainant as security which was later on misused by the complainant. It is also the case of the complainant that accounts were settled on 26.05.2004 and after going through the entries, the petitioner gave post dated cheque bearing no.220614 dated 30.11.2004 which was presented on the same day i.e. 30.11.2004. It is also not disputed that cheque has been filled in with different inks and different hand writings, rather admission clearly indicates that it was taken well in advance. Dealing with the similar facts and circumstances in **Vijay vs. Laxman** 2013 (1) R.C.R.(Civil) 980, the Hon'ble Supreme Court has held as under:

CRR-2594-2014

“10. Coming then to the present case, the absence of any details of the date on which the loan was advanced as also the absence of any documentary or other evidence to show that any such loan transaction had indeed taken place between the parties is a significant circumstance. So also the fact that the cheque was presented on the day following the altercation between the parties is a circumstance that cannot be brushed away. The version of the respondent that the cheque was not returned to him and the complainant presented the same to wreak vengeance against him is a circumstance that cannot be easily rejected. Super added to all this is the testimony of DW1, Jeevan Guru according to whom the accounts were settled between the father of the complainant and the accused in his presence and upon settlement the accused had demanded return of this cheque given in lieu of the advance. It was further stated by the witness that the complainant’s father had avoided to return the cheque and promised to do so on some other day. There is no reason much less a cogent one suggested to us for rejecting the deposition of this witness who has testified that after the incident of altercation between the two parties the accused has been supplying milk to the witness as he is also in the same business. Non-examination of the father of the complainant who was said to be present outside the Court hall on the date the complainant’s statement was recorded also assumes importance. It gives rise to an inference that the non-examination was a deliberate attempt of the prosecution to keep him away from the court for

CRR-2594-2014

otherwise he would have to accept that the accused was actually supplying milk to him and that the accused was given the price of the milk in advance as per the trade practice in acknowledgement and by way of security for which amount the accused had issued a cheque in question.

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19. *Having heard the learned counsels for the contesting parties in the light of the evidence led by them, we find substance in the plea urged on behalf of the complainant-appellant to the extent that in spite of the admitted signature of the respondent-accused on the cheque, it was not available to the respondent-accused to deny the fact that he had not issued the cheque in favour of the complainant for once the signature on the cheque is admitted and the same had been returned on account of insufficient funds, the offence under Section 138 of the Act will clearly be held to have been made out and it was not open for the respondent-accused to urge that although the cheque had been dishonoured, no offence under the Act is made out. Reliance placed by learned counsel for the complainant-appellant on the authority of this Court in the matter of K.N. Beena vs. Muniyappan And Anr.[1] adds sufficient weight to the plea of the complainant-appellant that the burden of proving the consideration for dishonour of the cheque is not on the complainant-appellant, but the burden of proving that a cheque had not been issued for discharge of a lawful debt or a liability is on the accused and if he fails to discharge such burden, he is liable to be convicted for*

the offence under the Act. Thus, the contention of the counsel for the appellant that it is the respondent-accused (since acquitted) who should have discharged the burden that the cheque was given merely by way of security, lay upon the Respondent/ accused to establish that the cheque was not meant to be encashed by the complainant since respondent had already supplied the milk towards the amount. But then the question remains whether the High Court was justified in holding that the respondent had succeeded in proving his case that the cheque was merely by way of security deposit which should not have been encashed in the facts and circumstances of the case since inaction to do so was bound to result into conviction and sentence of the Respondent/Accused.

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23. *Applying the ratio of the aforesaid case as also the case of K.N. Beena vs. Muniyappan And Anr. (supra), when we examine the facts of this case, we have noticed that although the respondent might have failed to discharge the burden that the cheque which the respondent had issued was not signed by him, yet there appears to be a glaring loophole in the case of the complainant who failed to establish that the cheque in fact had been issued by the respondent towards repayment of personal loan since the complaint was lodged by the complainant without even specifying the date on which the loan was advanced nor the complaint indicates the date of its lodgement as the date column indicates 'nil' although as per the complainant's own story, the respondent had assured the complainant that*

CRR-2594-2014

he will return the money within two months for which he had issued a post-dated cheque No.119582 dated 14.8.2007 amounting to Rs.1,15,000/- drawn on Vikramaditya Nagrik Sahkari Bank Ltd., Ujjain. Further case of the complainant is that when the cheque was presented in the bank on 14.8.2007 for getting it deposited in his savings account No.1368 in Vikarmaditya Nagrik Sahkari Bank Ltd. Fazalpur, Ujjain, the said cheque was returned being dishonoured by the bank with a note 'insufficient amount' on 14.8.2007. In the first place, the respondent-accused is alleged to have issued a post-dated cheque dated 14.8.2007 but the complainant/appellant has conveniently omitted to mention the date on which the loan was advanced which is fatal to the complainant's case as from this vital omission it can reasonably be inferred that the cheque was issued on 14.8.2007 and was meant to be encashed at a later date within two months from the date of issuance which was 14.8.2007. But it is evident that the cheque was presented before the bank on the date of issuance itself which was 14.8.2007 and on the same date i.e. 14.8.2007, a written memo was received by the complainant indicating insufficient fund. In the first place if the cheque was towards repayment of the loan amount, the same was clearly meant to be encashed at a later date within two months or at least a little later than the date on which the cheque was issued: If the cheque was issued towards repayment of loan it is beyond comprehension as to why the cheque was presented by the complainant on the same date when

it was issued and the complainant was also lodged without specifying on which date the amount of loan was advanced as also the date on which complaint was lodged as the date is conveniently missing. Under the background that just one day prior to 14.8.2007 i.e. 13.8.2007 an altercation had taken place between the respondent-accused and the complainant-dairy owner for which a case also had been lodged by the respondent-accused against the complainant's father/dairy owner, missing of the date on which loan was advanced and the date on which complaint was lodged, casts a serious doubt on the complainant's plea. It is, therefore, difficult to appreciate as to why the cheque which even as per the case of the complainant was towards repayment of loan which was meant to be encashed within two months, was deposited on the date of issuance itself. The complainant thus has miserably failed to prove his case that the cheque was issued towards discharge of a lawful debt and it was meant to be encashed on the same date when it was issued specially when the complainant has failed to disclose the date on which the alleged amount was advanced to the Respondent/Accused. There are thus glaring inconsistencies indicating gaping hole in the complainant's version that the cheque although had been issued, the same was also meant to be encashed instantly on the same date when it was issued.

24. *Thus, we are of the view that although the cheque might have been duly obtained from its lawful owner i.e. the respondent-accused, it was used for unlawful reason as it appears to have been submitted*

CRR-2594-2014

for encashment on a date when it was not meant to be presented as in that event the respondent would have had no reason to ask for a loan from the complainant if he had the capacity to discharge the loan amount on the date when the cheque had been issued. In any event, it leaves the complainant's case in the realm of grave doubt on which the case of conviction and sentence cannot be sustained."

It is also pertinent to mention here that once the dispute arose that entries are forged and fabricated, the trial Court yet decided the case in a summary trial and no proper opportunity to the petitioner was afforded to defend his case which has prejudiced his right. Rather, the defence led by the petitioner clearly indicates that the complainant was in a dominating position and had been advancing loans after getting their signatures on blank papers/cheques. It is also pertinent to mention here that two crop seasons i.e. hari (rabi) and sauni (kharif) are prevalent in the States of Punjab and Haryana. The rabi crops are generally harvested from mid April to mid May and kharif crops are generally harvested from September to November. The account of the petitioner was allegedly settled in the month of May i.e. rabi harvesting season and the post dated cheque bore the date of month of November i.e. also kharif harvesting season. This clearly indicates that post dated cheque was in fact to ensure that the petitioner would sell his next crop to the complainant and as such it was given as a security. In fact, this is the mode adopted by the commission agents to always keep farmers in their

CRR-2594-2014

clutches. Since the complainant has admitted his relationship with the petitioner as commission agent and farmer, the complainant has withheld the best evidence with regard to sale of agricultural produce of the year 2004 by the petitioner. The judgment in *Hiten P. Dalal's case (supra)* cited by learned counsel for the respondent is not applicable to the facts and circumstances of the present case.

In view of above, both the courts below have misread the important ingredients of Sections 118(a) and 139 of the N.I.Act and Section 34 of the Indian Evidence Act. The impugned judgments/order of both the courts below resulted into grave miscarriage of justice due to misreading, non-reading of evidence and provisions of the law. Therefore, the same are illegal, perverse and not sustainable in the eyes of law. Accordingly, this Court proceeds to pass the following order:

- (i) Criminal Revision Petition is allowed;
- (ii) The complaint filed by the respondent under Section 138 of the Act is dismissed;
- (iii) The impugned orders of conviction and sentence passed on the petitioner by the courts below are set aside;
- (iv) The petitioner is acquitted of the notice of accusation served upon him.
- (v) Fine, if any, paid by the petitioner-accused be refunded to him;

CRR-2594-2014

- (vi) The petitioner-accused be released forthwith, if not required in any other case; and
- (vii) The respondent-complainant will be at liberty to avail the remedy in accordance with law.

03.03.2015

parveen kumar

(Paramjeet Singh)
Judge