

CRR-4646 of 2015 (O&M)

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

CRR-4646 of 2015 (O&M)
Date of Decision: 02.11.2017

Jai Pal Jyani

....Petitioner

Versus

Mohan Lal Agarwal

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sandeep Jasuja, Advocate, for the petitioner.
Mr. A.K. Khunger, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

This revision petition is directed against the judgment dated 19.11.2015 of the First Appellate Court affirming the judgment of conviction and order of sentence dated 07.06.2012 of Sub Divisional Judicial Magistrate, Abohar holding the petitioner guilty under Section 138 of the Negotiable Instruments Act (in short as the 'Act') and sentencing him to undergo rigorous imprisonment for two years and to pay fine of ₹ 10,000/-, in default thereof to further undergo rigorous imprisonment for two months.

Put pithily, upon a complaint of the respondent-complainant under Section 138 of the Act, the petitioner was convicted in the manner as narrated in the opening part of the judgment.

Being aggrieved, petitioner preferred an appeal, but remained unsuccessful.

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dated 02.04.2004 regarding loss of cheque book containing the cheque in question, more than two years prior and had also got closed his bank account. Both the Courts below also did not consider that there was no corroborative evidence in support of the assertion of the respondent-complainant that the petitioner had issued the cheque in question in lieu of loan taken by him. The source of money allegedly paid by him to the complainant was not proved. The petitioner examined the handwriting expert, who has proved that the body of the cheque was filled with different pen and ink, which proves that the things did not happen in the manner as narrated by the complainant. In support of his arguments, learned counsel for the petitioner placed reliance on the judgments of the Hon'ble Supreme Court in ***Vijay v. Laxman and another***, 2013(1) R.C.R.(Civil) 980, ***Krishna Janardhan Bhat v. Dattatraya G. Hedge***, 2008(1) R.C.R.(Criminal) 695 and ***Nitinbhai Saevatilal Shah and another v. Manubhai Manjibhai Panchal and another***, 2011(4) R.C.R.(Criminal) 148.

On the other hand, learned counsel for the respondent-complainant vehemently opposed the aforesaid submissions of the learned counsel for the petitioner submitting that both the Courts below have recorded concurrent findings against the petitioner. This Court, being a revisional Court, has a very limited jurisdiction. On summoning of the petitioner, he appeared before the trial Court in January, 2008 and thereafter, after 9-10 months lodged an FIR under Section 420 IPC against the complainant-respondent on the basis of DDR, which was quashed by this Court upon a petition filed by the respondent under Section 482 Cr.P.C.

Silence of the petitioner for about nine months and not bringing to the

notice of the trial Court at the first instance, when he appeared before it, that

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he had lodged DDR in the year 2004 for misplacement of his signed blank cheque book shows malafide of the petitioner.

I have given anxious consideration to the submissions made by both the sides.

Undisputedly, the petitioner did not respond to the legal notice served by the respondent to him, rather the same was refused as per report of refusal (Ex.P-13), which amounts to his admission of issuance of cheque in question to the respondent-complainant. The petitioner also did not deny his signature on the disputed cheque. Admittedly, the FIR got lodged by the petitioner, as a counter-blast to the complaint of the respondent against the impugned complaint under the Act, was quashed by this Court. The story put forth by the petitioner that his complete blank signed cheque book had lost, is completely unbelievable as no one keeps the whole blank cheque book duly signed by him in advance. The trial Court has made the following observations: -

“.....Accused Jaipal is stated to have lodged an FIR against the complainant U/s 420 IPC dated 3.10.2008 alleging the misuse of cheque by the complainant. No explanation of justification has been offered on behalf of the accused for remaining silent with effect from the date of receipt of summons from this Court for his appearance in January, 2008 till October, 2008 when he lodged FIR. Surprisingly it was for the first time in October 2008 while lodging FIR against the complainant accused has claimed to have lost his signed blank cheque. Whereas as per the aforementioned documents as have been proved by the accused through DW-1 and DW-2 he has never informed or reported loss of his blank signed cheque. As per settled position of law in case the registered notice sent for service of accused is received back with the report of refusal, the same amounts to proper and valid service. The address of the accused as given on the notice and

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envelope Exh.P11 and Exh.P13 respectively is not in dispute. In the said circumstances presumption of service of notice upon the accused is in favour of the complainant. As per requirements of law, the same was required to be rebutted by the accused by leading cogent and convincing evidence that it is the complainant who has manipulated the report of refusal without knowledge of the accused. However, despite service of notice so issued by the complainant earlier to the institution of the present complaint as well as on receipt of notice through the process of Court in January, 2008 and earlier to that the accused has never reported before any authority if he had lost his signed blank cheque. Admittedly, FIR as was got lodged by the accused has already been quashed by the Hon'ble High Court vide order dated 5.11.2009 as is lying on the file. In the said circumstances only on the plea of misuse of lost cheque the case of the complainant cannot be discarded. Infact for the reasons as discussed above it seems that the same is seems to be a well planned after thought plea of the accused in order to escape his liability on account of the issuance of cheque in dispute. Normally in case a person loses a blank signed cheque he would raise hue and cry moment he come to know that someone has misused it, but unfortunately that is not so in the case in hand as discussed above. Further it is to be kept in mind, in the initial rapat so lodged by the accused as well as intimation given to the bank he has never informed the number of cheques as were lying in the cheque book and further the fact if either one of the said cheque or all the cheque in the said cheque book were blank signed cheques. He has further failed to establish before the Court the purpose for which he appended his signature on blank cheque in his cheque book as normally no one keep blank signed cheque without any particular necessity.

16. Whereas, the contention regarding availability of funds with the complainant is concerned, in his examination in chief itself he has placed on file jamabandi Exh.P14 depicting the land so owned by him. During his cross examination being PW-3

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complainant has specifically stated that he had advanced the amount of cheque to the accused by obtaining from Thekedar being the amount of Theka. Further, he has stated that he came to know the accused as he had met him at the shop of commission agent Phul Chand Ram Narain. He has stated that he had met the accused at the said commission agency for about 50-60 times. He has stated that he had no other dealing with the accused except qua cheque in dispute. Even during his cross examination, the complainant has admitted the difference of ink in the body writing of cheque and signatures. However, this Court does not find the same to have created any impact on the case of the complainant as even in case it is presumed that complainant got blank signed cheque from the accused, then it is to be presumed that accused himself has given implied authority to the complainant to fill in the blank columns thereof as and when accused failed to discharge his liability. For the said reasons the deposition of DW-3 and report so tendered by him is of no help to the accused. Similarly, the explanation as has been given by the complainant during his cross examination regarding arrangement of funds is also probable as being land owner he might have obtained the amount of cheque in dispute from person to whom he gave his land on lease. Moreover, as per presumption enshrined U/s 139 of the Act as discussed above it is to be presumed that complainant received the cheque in dispute for discharge of legally enforceable debt. The Ld. Defence counsel has further relied upon case titled "Krishna Janardhan Bhat Vs. Dattaraya G. Hedge, 2008(1) ACJ 412(S.C.)" wherein it has been held by the Hon'ble Apex Court that presumption available U/s139 is as to issuance of cheque for discharge of any debt or other liability. Whereas the existence of legally recoverable debt is not a matter of presumption. But recently in case titled "Rangappa Vs. Sri Mohan, 2010(3) CCC, 115(S.C.)" the Hon'ble Apex Court has laid down that presumption Under Section 139 of the Act does indeed includes the existence of a legally enforceable debt or liability. While holding so, the

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Hon'ble Apex court has also discussed the law so laid down by it in case titled "Krishna Janardhan Bhat (Supra). Even otherwise, the facts of Krishna Janardhan Bhat(Supra) are peculiar and distinguishable as compared to the facts of the case in hand. For the said reason the accused cannot be bestowed any benefit on the basis of same. The said presumption was required to be rebutted by the accused himself by leading direct or indirect evidence. However, the accused himself has failed to justify the possession of cheque in dispute with the complainant. The plea of loss of cheque as discussed above is a shaky and contradictory plea and merely on the basis of the same accused cannot be said to have rebutted the presumption so raised in favour of the complainant. Accordingly, it is to be presumed that complainant h as received the cheque in dispute from the accused for discharge of his liability towards the complainant."

Further, the First Appellate Court has made following observations: -

"20. After the appraisal of the entire evidence as well as the submissions raised by the counsel for the parties it has become evident that the accused has not denied his signatures upon the cheque Ex.P7 proved on the record. The main stand of the accused/appellant in this case is the loss of cheque book and the accused lodged the DDR on 2.4.2004 but FIR against the complainant under Section 420 IPC was lodged on 3.10.2008 and the apellant/accused has failed to explain why did he keep silent for such a long time rather it shows that the FIR was the counter-blast to the present complaint filed by the complainant. It has also become evident that the accused had already prepared his defence by recording DDR with the police and already closed his account vide letter Ex.DW2/A and Ex.DW2/B. The onus was upon the appellant/accused how and under what circumstances the complainant was possessing the said cheque as the story of the appellant/accused has not been accepted and the FIR has been quashed in the instant case which is evident from Ex.R1. No

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*doubt Ex.R1 is not relevant for deciding the controversy of the alleged cheque but it can be taken into consideration for the limited purpose of taking into consideration the stand of the appellant/accused so far it is pertaining to the lodging of FIR against the complainant under Section 420 IPC. At the same time the accused himself has relied upon Ex.DX and Ex.DY the affidavit as well as the petition filed by the complainant before the Hon'ble High Court wherein the complainant has taken the stand tha the signature on the cheque as well as handwriting are of the same person. It would be relevant to note here for the cost of repetition that the accused has not denied his signatures up on the cheque and the handwriting over the other part looses its significance as per the law laid down in **D. Atchuthya Reddy (supra)**, **M/s Decon Construction (supra)** and the ratio of judgment **A. Dinakar** referred by the ld. counsel for appellant is not applicable in this case which proceeds on different facts as in this case the complainant has duly proved the issuance of cheque Ex.P7 in the discharge of legal liability.*

*21. The complainant has also established his capacity while stepping into the witness box as PW-3 that he has advanced the amount to the accused as he had received the said amount from the contractor. Nay, the complainant had also proved his meetings with the accused in the commission agency of Phool Chand Ram Narayan and it cannot be assumed that the lost cheque book of accused as alleged would come into the hands of complainant only by chance rather the accused had given the cheque to the complainant pertaining to the closed account. The ratio of the judgment **Vijay (supra)** and **Naresh Kumar (supra)** referred by the ld. counsel for the appellant is not applicable in the present case and complainant has proved the ingredients of Section 138 of NI Act.*

x x x x x x x

*The Apex Court referring to the objects underlying Sections 138 and 139 of the Act, has observed in **Goa Plast (P) Ltd. v. Chico Ursula 'D' Souza, 2004 (1) RCR (Criminal) 179**, that proper and*

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smooth functioning of all business transactions particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. The Court further observed that in our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the Bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a Civil Court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.

*The Hon'ble Apex Court in **Rangappa v. Sri Mohan, 2010 (3) RCR (Criminal) 164 (SC)**, and in **C. Keshavamurthy v. H.K. Abdul Zabbar, 2012 (3) RCR (Criminal) 944 (SC)** has held that the presumption under Section 139 of the Act, includes the presumption of the existence of a legally enforceable debt or liability. That presumption of the existence of a legally enforceable debt or liability. That presumption is required to be honoured, and if it is not so done, the entire basis of making these provisions will be lost. It is for the accused to explain his case and defend it once the fact of cheque bouncing is prima facie established. The burden is on him to disprove the allegations once a prima facie case is made out by the complainant.*

*Recently, the Hon'ble Apex Court in **T. Vasanthakumar v. Vijayakumari, 2015 (2) LAR 390**, following the ratio laid down in **Rangappa (supra)**, has held as follows:-*

*"This court has held in its three judge bench judgment in **Rangappa v. Sri Mohan 2010 (3) Rcr (Criminal) 164: 2010 (3) RCR (Civil) 197: 2010 (3) Recent Apex Judgments (RAJ) 415: (2010) 11 SCC 411: "The***

presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presentation 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 respondent complainant."

*23. Furthermore, the case of the complainant is squarely covered under the ratio of judgment of Hon'ble Apex Court considering the Act and Conduct of the accused similar to the present case and accused was convicted in **Rangappa (supra)** on the grounds as held in para no.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 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 record of the case, there was slight discrepancy in the

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complaintant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the contruction-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.

24. This Court has also perused the findings recorded by Learned Trial Court in the impugned judgment. The findings recorded by Learned Trial Court are well reasoned and based on correct appreciation of law and facts and the same do not call for any interference by this Court in the present appeal. Resultantly, the appeal filed by the appellant/accused lacks merit and is liable to be dismissed.

25. The appellant/accused, then made a prayer for lenient view in the matter of sentence and his release on probation on account of good conduct. This prayer of appellant/accused is not tenable, because the cheque in question was issued by appellant/accused on 2.8.2006 and till today the appellant/accused has failed to discharge the liability on the basis thereof. Keeping in view the facts and circumstances of present case and the nature of offence committed by appellant/accused, the appellant/accused deserve no leniency in the matter of sentence. The sentence awarded by ld. trial court also does not call for any interference by this Court in the present appeal.”

Both the Courts below have dealt with all the points raised before

this Court on behalf of the petitioner, thus, the same are only repetition and,

therefore, are not discussed in view of the fact that they have already been

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dealt with completely by both the Courts below. Moreover, the facts of this case are distinguishable from the judgments referred by learned counsel for the petitioner.

Accordingly, the revision petition is dismissed.

November 02, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No