

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

CRR No.1035 of 2018 (O&M).

Decided on:-August 14, 2018.

Sarabjit Singh.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Saurav Bhatia, Advocate for
Mr. S.S. Rangi, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner-accused has filed the present revision petition against the judgment dated 20.12.2017 passed by learned Additional Sessions Judge, Patiala whereby his appeal filed against the judgment of conviction and order of sentence dated 31.05.2017 passed by learned Sub Divisional Judicial Magistrate, Nabha in Complaint Case No.32 dated 04.02.2013 titled as ***Punjab National Bank, Nabha Versus M/s Ramgarhia Agri. Engg. Works, Nabha***, was dismissed.

Briefly stated, the respondent No.2-complainant Punjab National Bank, Nabha had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) against the petitioner-accused. As per the complaint, on 02.12.2009, the petitioner had availed a cash credit limit facility to the tune of Rs.10 lakh from the bank for the purpose of manufacturing combines. This limit was enhanced on 02.07.2010 from Rs.10 lakh to Rs.17 lakh. The petitioner executed necessary documents in favour of

the complainant-bank and agreed to pay interest as per the bank norms. In discharge of his legal liability, the petitioner issued a cheque bearing No.501179 dated 03.01.2013 for a sum of Rs.17,90,393/- from his account No.1914 to be drawn on the Bank of Baroda, Nabha. However, on presentation of the cheque by the complainant-bank, the cheque was dishonoured vide memo dated 05.01.2013 with the endorsement "Funds Insufficient". After dishonouring of the cheque, the complainant-bank issued a legal notice to the petitioner-accused on 09.01.2013 and the same was sent by way of registered post on 10.01.2013. The notice was duly served, but still the petitioner failed to make the payment. Hence, the complaint.

Vide order dated 20.03.2013 passed by learned Magistrate, the petitioner-accused was summoned to face trial for the offence under Section 138 of the Act. The accused appeared in the Court and notice of accusation under Section 138 of the Act was served upon him to which he did not plead guilty and claimed trial.

In support of its case, the complainant-bank examined Krishan Gopal Garg, Branch Manager as CW1. He reiterated the version of the complainant-bank, as put forth in the complaint. Ashwani Kumar, Clerk was examined as CW2 to prove the sending of the legal notice. Jagdev Singh Sharma, the then Manager of the bank, before whom the accused had signed the documents was also examined as CW3. The complainant-bank also tendered into evidence the documents i.e. cheque bearing No.501179 dated 03.01.2013 as Ex.C1, memo of Bank of Baroda as Ex.C2, copy of notice as Ex.C3, postal receipt as Ex.C4, acknowledgement as Ex.C5, general power of

attorney in favour of CW1 as Ex.C6, account statement of accused as Ex.C7, copy of the hypothecation agreement as Ex.C8 and Ex.C9.

Thereafter, statement of the petitioner-accused under Section 313 Cr.P.C. was recorded, wherein all the incriminating evidence appearing against him was put to him. The accused denied all the allegations and pleaded his innocence and false implication. He had taken a plea that he is innocent and has falsely been implicated in the case. The complainant-bank has misused the blank cheque obtained by them before granting the limit as a security. However, in defence, no evidence was led by the petitioner-accused.

Vide impugned judgment dated 31.05.2017, learned trial Court convicted the petitioner under Section 138 of the Act and vide separate order dated 31.05.2017 sentenced him to undergo rigorous imprisonment for a period of one year and six months and compensation equivalent to the cheque amount.

The judgment of conviction and order of sentence dated 31.05.2017 passed by learned trial Court was made subject matter of appeal before the Court of Session. However, the appeal of the petitioner was also dismissed by learned Additional Sessions Judge, Patiala vide judgment dated 20.12.2017 upholding the sentence and compensation. The relevant observations of learned appellate Court are reproduced as under:

“14. Keeping in view of above discussion, documents and evidence brought on record, it is clear that complainant has proved the fact that cheque Ex.C1 was issued by accused Sarabjit Singh on behalf of Ramgarhia Agri. Engg. Works to discharge the legal liability, but the cheque was dishonoured due to insufficient funds through memo Ex.C2 duly proved on record.

Despite service of legal notice Ex.C3, accused has failed to make the payment to the complainant bank or even in the court on his appearance. As such, presumption U/s 118 and 139 of Negotiable Instruments Act has been rightly drawn by the learned trial court against the accused and it has not been treated merely as evidence, which has been contended by him in the grounds of appeal by the appellant. Moreover, when issuance of cheque or signatures over the same had not been denied by the accused, then presumption also raises against him.

15. *During the arguments, learned counsel for appellant contended with vehemence that the complainant bank was not competent to bring the complaint, but this plea raised by him has been rightly repelled by the learned counsel for respondent bank that the complaint has been instituted by the then manager being a competent person. Furthermore, statement of account had also been proved on record as Ex.C7, which is perse admissible document under Bankers Books Evidence Act. Accordingly, submissions raised by learned counsel for appellant in regard to NPA or claim of interest has been rightly considered and declined by the learned trial court.*

16. *In the light of above discussion and evidence brought on record, it is clear that the complainant bank has been able to substantiate their allegations against the accused-appellant by covering the distance between the words may be true and must be true, because documents had been proved, therefore presumption has been rightly drawn, which has not been rebutted by the accused-appellant by way of oral and documentary evidence in the cross-examination of witnesses of the complainant or by way of defence. In such circumstances, the law cited by learned counsel for appellant in **M. S. Narayana Menon @ Mani Versus State of Kerala & Anr. 2006(5) ALL MR(SC) 33, G. Gopan Versus Tonny Varghese 2008(2) R.C.R.***

(Criminal) 225, Chhabra Fabrics Private Limited Versus Bhagwan Dass, Proprietor of Dhingra Handicrafts, 2015(2) DCR 587 and H. R. Nagarathna Versus Jayashree Prasad 2010(1) DCR 744 neither covers to the facts of the case and nor giving any help to his stand by covering to the evidence on record, whereas on the other hand the law referred by learned counsel for respondent in Shalini Enterprise and another Versus Indiabulls Financial Services Ltd. 2013(2) C.C.C. 835 and Anjali Kukar Vs. M. M. Lal Chhabra 2016(2) R.C.R. (Criminal) 197 directly and squarely covers to the matter in controversy. As such, contentions raised by learned counsel for appellant is found to be bereft of any merit, whereas the contentions raised by learned counsel for respondent are in accordance with the evidence and legal position, which has been rightly appreciated and evaluated by the learned trial court.

17. As an upshot of above discussion, documents and evidence brought on record, it is clear that the complainant bank has successfully proved the allegations leveled in the complainant beyond any shadow of reasonable doubt, therefore, ingredients of offence u/s 138 of the Negotiable Instruments Act were fulfilled and the learned trial Court has rightly arrived at conclusion, holding accused-appellant as guilty for offence U/s 138 of Negotiable Instruments Act. Accordingly, this court is of the considered view that complainant has proved the ingredients of offence under Section 138 of the Negotiable Instruments Act beyond any shadow of reasonable doubt and the judgment of conviction delivered by the learned trial court is found to be speaking and legal. Consequently, accused-appellant has been found guilty for offence under Section 138 of the Act on the basis of reasoned and legal judgment, which is hereby upheld qua conviction of the appellant.”

It is in these circumstances, the petitioner has preferred the present revision petition.

Learned counsel for the petitioner has argued that the complainant-bank has nowhere stated in the complaint that it is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act. Even in evidence, no certificate has been placed to support the fact that the bank is a body corporate. The complaint was filed through Krishan Gopal Garg, Branch Manager, who claimed himself to be a duly authorised agent of the bank, but in the entire complaint/proceedings, it has nowhere been pleaded that he is the authorised agent of the complainant-bank to file and pursue the complaint. Thus, it is neither stated in the complaint that Krishan Gopal Garg was authorised by the bank nor he has validly proved his power of attorney or he is aware of any loan document and the facts of the case. Therefore, the mere fact that this witness mounted the witness-box with a view to depose in favour of the bank is absolutely insignificant, when he is factually not aware of any details of the case.

He has further contended that another witness examined by the complainant-bank was Jagdev Singh Sharma as CW3, remained posted as Manager Scale-II in Branch Hakiman Street, Nabha from 25.06.2007 to 03.09.2010. He proved the agreement of hypothecation of goods Ex.C8 dated 02.12.2009 and the second agreement Ex.C9 dated 02.07.2010 for the enhanced limit of Rs.17 lakh. This witness was not cited in the list of witnesses and he did not appear on behalf of the complainant-bank at the stage of adducing preliminary evidence. He has not brought any document showing his posting at the relevant time at the concerned branch. He has

admitted that he was not a summoned witness and the agreements Ex.C8 and Ex.C9 do not carry even a fleeting reference in the whole body of the complaint. The complainant bank has also examined Ashwani Kumar, who claims to be working as Clerk with Mr. Inderjit Singh Sahni, a lawyer at Nabha. He has proved the legal notice Ex.C3 allegedly served by the said Advocate before filing the complaint. His testimony is not sufficient enough to convict the petitioner.

He has further argued that while enhancing the cash credit limit from Rs.10 lakh to Rs.17 lakh, the application form was not in the handwriting of the complainant and the complainant has not filed the original loan documents. The document whereby the cash credit limit was enhanced from Rs.10 lakh to Rs.17 lakh was not produced in the Court and at the most, the cheque in question was issued by the petitioner as a security cheque.

I have heard learned counsel for the petitioner.

Apart from the fact that the scope of interference in revisional jurisdiction is very limited and reference in this regard may be made to the judgments of Hon'ble Supreme Court in ***Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423*** and ***Venkatesan Versus Rani and another 2013(4) RCR (Criminal) 919***, this Court finds that there is a presumption of law that a cheque is issued for consideration and the other party holds it in due course of law unless it is shown that the instrument was obtained by means of an offence or fraud or for unlawful consideration. It is for the accused to adduce evidence to rebut the presumption. In the case in hand, the signatures of the accused have not been denied on the cheque in question and the cheque has been issued from the account of the accused.

Therefore, the presumption is raised against the accused. In this regard, the relevant provision of the Act as contained in Section 139 of the Act reads as under:

“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 language of the Section does refer that initial presumption of consideration is in favour of the complainant and the words “*unless contrary is proved*” means that the burden to rebut the said presumption is upon the accused. The presumption contained in Section 139 of the Act is a rebuttable presumption, which can be refuted by the accused by leading the cogent and convincing evidence. Therefore, in view of Section 139 of the Act, unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque, for the discharge of whole or part of any debt or liability. The presumption will live, exist and survive and shall end only when the contrary is proved by the accused that the cheque was not issued for consideration or in discharge of any debt or liability. The presumption is not in itself evidence, but only makes a *prima facie* case for a party for whose benefit it exists. The accused has an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant.

As regards the authorisation to file the complaint, the photocopy of general power of attorney in favour of CW1 depicts that he was authorised to institute suits, to appear and to take action on behalf of the complainant-

bank along with all authorisation. The said power of attorney is dated 26.10.2012, which is prior to the filing of the complaint, which was filed on 04.02.2013. Thus, merely because the name of CW1 has not been mentioned in that authorisation, is not fatal to the case of the complainant-bank.

Thus, the petitioner-accused has not been able to prove that in what manner, impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Moreover, on March 19, 2018, when the present petition was listed for hearing before this Court, the following order was passed:

“Counsel for the petitioner prays for an adjournment to seek instructions with regard to the payment of the cheque amount.

Adjourned to 16.04.2018.”

Thereafter on 26.04.2013 also, this Court passed the following order:

“Counsel for the petitioner prays for an adjournment to seek instructions as to the amount which would be payable by the petitioner in the form of a bank draft drawn in favour of respondent No.2-Punjab National Bank.

Adjourned to 02.05.2018 for consideration.”

Further, on May 02, 2018, the following order was passed by this Court:

“Request for adjournment has been made on behalf of counsel for the petitioner for compliance of the order dated 26.04.2018.

Adjourned to 13.08.2018.”

Bare perusal of the statements so made by learned counsel for the petitioner on the aforesaid dates would reveal that though learned counsel for the petitioner has availed sufficient opportunities to seek instructions, but the petitioner has failed to make the payment of the cheque in question.

Thus, considering the fact that there is a limited scope of interference in revisional jurisdiction and in view of the aforesaid orders passed by this Court, this Court finds that the present revision, being devoid of any merit, deserves to be dismissed.

Accordingly, the impugned judgment of conviction and order of sentence dated 31.05.2017 passed by learned Sub-Divisional Judicial Magistrate, Nabha and the judgment dated 20.12.2017 passed by learned Additional Sessions Judge, Patiala are affirmed and the present revision petition is dismissed.

August 14, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No