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

475 **CRR No. 2744 of 2018 (O&M)**
Date of Decision : 17.05.2019

Rajesh Kumar

... Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. A.K.Khunger, Advocate for the petitioner.

Mr.S.S.Cheema, AAG, Punjab.

Mr. Priyanshu Kamra, Advocate for respondent No.2.

HARNARESH SINGH GILL, J.

The present criminal revision has been filed by the petitioner-against the judgment dated 28.05.2018 passed by Additional Sessions Judge, Fazilka vide which in the criminal appeal filed by him against the judgment/order dated 18.05.2015 passed by Sub-Divisional Judicial Magistrate, Abohar, his conviction under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act') and sentence of rigorous imprisonment for a period of two years and to pay a fine of ₹5000/- and, in default thereof, to further undergo rigorous imprisonment for six months, was maintained.

Brief facts of the case are that a complaint was filed by complainant i.e. the Primary Cooperative Agriculture Development Bank Limited through its authorized representative under Section 138 of the Act against the petitioner with the allegation that the petitioner had raised a loan from the Bank which was to be repaid in installments along with interest as agreed upon. Therefore, to discharge his partial recoverable legal liability, the petitioner issued a cheque bearing No. 162802 dated 24.10.2013 for a sum of ₹2,60,000/- drawn on Punjab and Sind Bank in favour of the respondent-Bank. Accordingly, the respondent-Bank had presented the said cheque in the Bank for encashment but the same was dishonoured on the account of insufficient funds on 25.10.2013. Thereafter, the respondent-Bank served a legal notice on the petitioner on 13.11.2013.

After preliminary evidence, vide order dated 01.02.2014 the petitioner was summoned to face the trial. Statement of the petitioner under Section 313 Cr.P.C. was recorded in which the petitioner had denied the charges against him and pleaded not guilty and claimed trial.

As noted by the trial court, the petitioner did not lead any evidence in his defence. As mentioned above, the trial court vide judgment and order dated 18.05.2015 convicted the petitioner for the offence punishable under Section 138 of the Act and sentenced him accordingly.

Thereafter, petitioner preferred an appeal which came up for hearing before the Additional Sessions Judge, Fazilka. The Additional District Judge, Fazilka vide judgment dated 28.05.2018 dismissed the appeal preferred by the petitioner and upheld the judgment and order passed by the trial court.

Learned counsel for the petitioner has argued that the complaint in question was filed through Mayank Rai, who was not competent to file the present complaint. Moreover, the bank had failed to prove on record that there was a debt against the petitioner at any stage.

Moreover, the cheque in question was given as a security while advancing the loan to the petitioner but the Bank had misused the same. It had further failed to prove that there was any legal liability towards the petitioner for which the petitioner had issued the cheque. Counsel for the petitioner has further argued that the cheque for a sum of ₹2,60,000/- in favour of the respondent-Bank, was never issued.

Learned counsel for the respondent-Bank has submitted that Mayank Rai was authorized representative of the Bank and was competent to file the criminal complaint. Counsel for the respondent-Bank has further submitted that the petitioner had taken loan from the Bank but failed to return the same. Thus, in order to discharge his legal liability, the petitioner had issued cheque in question and assured the respondent-Bank that the cheque in question will be encashed whenever presented for encashment within the stipulated period. Since the cheque was presented for encashment but the same was dishonoured due to insufficient funds, a legal notice was issued to the petitioner on 13.11.2013. As the petitioner had failed to discharge his liability, the courts below have rightly held the petitioner guilty.

I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

It is apparent that the cheque in question was issued by the petitioner to the respondent-Bank to repay some part of his loan. As per the record, the petitioner has not raised any dispute that the cheque in question does not bear his signatures and the cheque was dishonoured due to insufficiency of funds in the account of the petitioner.

Moreover, Ex.P-12 placed on record by the respondent Bank, shows that on 24.11.2012 a sum of ₹3,00,780/- was shown as outstanding debt balance in the account of the petitioner. Therefore, to clear the some part of the debt and under the legal liability, the petitioner gave a cheque which was dishonoured due to insufficient funds.

Counsel for the petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in ***A.C.Narayanan Versus State of Maharashtra and another,*** 2013(4) RCR (Criminal) 306 wherein it is held that filing of the complaint under Section 138 of Act through the power of attorney holder is perfectly legal and competent. Thus, the law cited by counsel for the petitioner does not cover the case of the petitioner. Rather the respondent-Bank had filed the complaint in question through the legally authorized person.

It has been rightly held by the courts below that in order to discharge his partial recoverable legal liability, the petitioner had issued the cheque in question. The petitioner did not raise any question to the authenticity of the statement of the account of loan that had been placed by the respondent-Bank on record. The signatures on the cheque had not been disputed by the petitioner. Therefore, this court draws the conclusion that the petitioner had issued the cheque in question in order to discharge his legal and enforceable liability, but the same had not been honoured because of insufficiency of funds.

Regarding admission of the signatures on the cheque, the trial court has rightly relied upon the Hon'ble Supreme Court in ***Vijay Vs. Laxman and another***, 2013 (1) RCR (Crl) 1028 wherein in para No. 19, it has been held as under:-

> *"19. Accused admitting his signatures on the cheque. It would make out an offence under Section*

> *138. Burden of proving consideration for dishonour of the cheque is not on the complainant, but the burden of proving that cheque had not been issued for discharge of lawful debt or liability is on the accused and if he failed to discharge such debt or 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, I do not find any infirmity in the order passed by the courts below. Accordingly, present criminal revision is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

17.05.2019
pooja saini

Whether speaking/reasoned? *Yes*

Whether reportable? *Yes*