**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Acquittal Appeal No.39 of 2009**

Harpal Singh Aged about 40 years, S/o Gurubkash Singh, R/o D-8, Sector-3, Devendra Nagar, Police Station – Ganj, Tah. & Distt-Raipur (CG)

**---Appellant**

**Versus**

Nadir, Aged about 35 years, S/o-Ramjan Ali, R/o-Janta Quarter No.500, New Rajendra Nagar, Tah. & Distt-Raipur (CG)

**--- Respondent**

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For Appellant :- Mr.Y.C.Sharma, Advocate

For Respondent :- Mr.Prafull Bharat, Advocate

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**21/01/2021**

1. The appellant/complainant filed a complaint against the respondent/accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter, "the NI Act") stating *inter alia* that in discharge of his liability towards the petitioner/complainant, on 17.08.1997 the respondent/accused issued a cheque, which has been dishonoured on 1.9.1997 on the ground of insufficient fund. Thereafter, notice was issued and thereafter complaint was filed, in which

offence punishable under Section 138 of the NI Act was registered and summons was issued to the respondent/accused.

2. The respondent/accused abjured his guilt and entered into defence. He has denied that he has obtained an amount of ₹35,000/- from the appellant/complainant and took the defence that blank cheque was signed by him and further particulars were got filled by the complainant and as such, no case for offence punishable under Section 138 of the NI Act is made out. On behalf of the complainant, the complainant himself and his two witnesses L.M.Bairagade and R.P.Dubey were examined.

3. Learned trial Court, after evaluation of oral and documentary evidence on record, by its judgment dated 22.9.2004, particularly relying on the fact that since the accused has issued only blank cheque and other particulars were filled by the complainant, held that no offence under Section 138 of the NI Act is made out against the respondent/accused and acquitted him of the charge of Section 138 of the NI Act,

against which, this acquittal appeal has been filed by the appellant/complainant.

4. Mr.Y.C.Sharma, learned counsel appearing for the petitioner/complainant, would submit that the trial Court is absolutely unjustified in holding that the appellant/complainant has failed to prove that cheque in question was issued by the respondent/accused in discharge of his debt or liability, as there is a presumption under Section 139 of the NI Act though it is a rebuttable presumption and the burden of proof lies upon the drawer of the cheque by adducing rebuttal evidence to prove that he did not issue the cheque towards any antecedent liability. He would further submit that the respondent/accused having admitted his signature on the blank cheque cannot disown his liability by asserting that the cheque has been misused and he has not filled the particulars of the cheque, as such, the impugned order passed the trial Court acquitting the respondent/accused deserves to be set aside.

5. Mr.Prafull Bharat, learned counsel appearing for the respondent/accused, would support the impugned order passed by learned trial Court and

submit that he has rightly been acquitted. He would rely upon the judgment of the Supreme Court in the matter of **Bir Singh v. Mukesh Kumar**[1].

6. At this stage, it would be appropriate to notice Section 139 of the NI Act which states as under :-

> "**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."

7. Section 139 of the NI Act mandates that unless the contrary is proved, it is to be presumed that the holder of the 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. However, the presumption is rebuttable by proving to the contrary. Section 139 of the NI Act introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused to prove by cogent evidence that there

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was no debt or liability. Mere denial or rebuttal by the accused is not enough.

8. In the matter of **Bir Sngh** (supra), their Lordships of the Supreme Court reviewed the earlier case law on this point and held as under:-

> "20. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which required the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in *Hiten P. Dalal*."

9. Following the principle of law laid by their Lordships of the Supreme Court in the matter of **Bir Singh** (supra), there is no iota of doubt that the presumption under Section 139 of the NI

Act is presumption of law and the accused has to adduce evidence showing the reasonable possibility of non-existence of the presumed fact as held by their Lordships in the matter of **<u>Hiten P. Dayal v. Bratindranath Banerjee</u>**[2].

10. In the instant case, no evidence has been adduced by the respondent/accused in rebuttal of the presumption enumerated under Section 139 of the NI Act showing that he had not drawn the cheque in question in favour of the petitioner/complainant for ₹35,000/- in discharge of his liability towards the appellant/complainant. As such, learned trial Court failed to notice the presumption as is available under Section 139 of the NI Act and is absolutely unjustified in holding that the appellant/complainant has failed to prove that the cheque in question was issued by the respondent/accused in discharge of his debt or liability, as such, the finding recorded by learned trial Court deserves to be set aside.

11. Now, coming to the next contention of learned counsel for the respondent/accused that the respondent/accused had signed a blank cheque and

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had not even filled the particulars of the cheque which has been misused by the appellant/complainant, therefore, he is not liable to pay the appellant/complainant further.

12. Their Lordships of the Supreme Court considered this issue in the matter of **Bir Singh** (supra) and held as under:-

> "33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
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> 34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge

of a debt or liability by adducing evidence.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

13. Reverting to the facts of the present case in light of the principle of law laid down by their Lordships of the Supreme Court in **Bir Singh** (supra), it is the case of the respondent/accused from day one that he had

signed a blank cheque and other particulars of the cheque were not even filled by him rather by the appellant/complainant who has misused the cheque in question. It is not the case of the respondent/accused that he has never signed and issued the cheque to the appellant/complainant and it is the admitted position on record that blank cheque was signed by the respondent/accused and was handed over by him to the appellant/complainant which goes to show that cheque was issued by the respondent/accused himself in favour of the appellant/complainant. Therefore, it cannot be held that no such cheque was issued by the respondent/accused in favour of the appellant/complainant and merely on the basis that blank cheque was issued by the respondent/accused, he cannot escape from his liability to pay the amount of the said cheque to the appellant/complainant.

14. Consequently, the impugned order dated 22.9.2004 passed by the Judicial Magistrate First Class, Raipur in Complaint Case No. 369/98 holding that cheque in question was not issued by the respondent/accused in discharge of his debt or liability towards the

appellant/complainant is set aside. However, the respondent/accused is sentenced only for fine of ₹50,000/- and same shall be paid as compensation to the appellant/complainant before the trial Court within 8 weeks from today, failing which, the respondent/accused shall undergo simple imprisonment for 3 months.

15. The acquittal appeal is allowed to the extent indicated hereinabove.

**Sd/-**

**(Sanjay K. Agrawal)**
**Judge**

B/-