IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1159-2021(O&M)
Date of decision : 12.10.2021

Jasbir Singh

... Petitioner

Versus

State of Punjab and another

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Raghav Goyal, Advocate
for the petitioner.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

Challenge in the present criminal revision petition is to the order dated 02.08.2019 passed by the Chief Judicial Magistrate, Sri Muktsar Sahib, vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (in short "NIA") and has been sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month; as also the order dated 17.08.2021 vide which the appeal filed against the order dated 02.08.2019 has been dismissed by the Additional Sessions Judge, Sri Muktsar Sahib.

Briefly stated the case of the complainant is that the accused (petitioner herein) used to visit the complainant's commission agency at New Grain Market, Sri Muktsar Sahib and used to take loan as and when required by him. It was alleged that the complainant's firm maintained account books consisting of Rokar Bahi, Khata Bahi etc. It was also alleged

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that from the period 02.05.2017 to 01.12.2017, several amounts were given to the petitioner and in order to discharge the said liability, the petitioner issued a cheque bearing no.303014 dated 01.12.2017 amounting to Rs.11,70,000/- drawn on Canara Bank out of his account no.3162101478. The said cheque was dishonoured and bank returned the cheque vide memo dated 01.12.2017 with the remarks "Funds Insufficient". Legal notice was issued on 14.12.2017 and when, despite service of the notice, the petitioner failed to pay the cheque amount, the complaint under Section 138 of NIA was filed.

The complainant had examined himself as CW-1 and had reiterated his version given in the complaint. Notice of accusation was served upon the petitioner, who pleaded not guilty and claimed trial.

The complainant produced on record the original cheque Ex.C1, original memo Ex.C2, copy of legal notice Ex.C3, postal receipt Ex.C4 as well as copies of original account books Ex.C5 to Ex.C18.

After considering the abovesaid documents and evidence, the trial Court found that the cheque was issued for a legally enforceable debt and with the same having been dishonoured, the petitioner was guilty of offence under Section 138 of NIA. The trial Court had also observed that in fact khata for the year 2017-18 pertaining to the petitioner was also produced and the entries in the same fully supported the case of the complainant. The relevant portion of the order of the trial Court is reproduced hereinbelow:-

> *" xxx xxx xxx*
>
> *The complainant has also placed on record the copy of Khata for the year 2017-18 pertaining to the accused as maintained by him. The entries in the Rokar*

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dated 02.05.2017 Ex.C5 pertaining to Rs.4,75,000/-, Rokar dated 08.05.2017 pertaining to sum of Rs.1560/- Ex.C6, Rokar dated 13.05.2017 pertaining to sum of Rs.3275/- Ex.C7, Rokar dated 25.5.2017 pertaining to sum of Rs.5590/- Ex.C8, Rokar dated 21.07.2017 pertaining to sum of Rs.1100/- Ex.C9, Rokar dated 05.08.2017 pertaining to sum of 2450/- Ex.C11, Rokar dated 09.8.2017 pertaining to sum of Rs.1600/- Ex.C12 contains the signatures of the accused Jasbir Singh. Similarly, in the Rokar dated 24.11.2017 there is an entry with regard to the giving of the amount of Rs.6,71,273/- by the complainant to the accused through cheque no.182313 for the purpose of payment of the limit in the bank. The accused has not explained how his signatures came in the Khata of the complainant firm. As per the accused he had stopped selling his crop with the firm of the complainant after 24.10.2016. If this stand taken by the accused taken to be correct then there was no reason for him signing the account books of the complainant's firm. Rather the presence of the signatures of the accused on the Rokar of the complainant firm as mentioned above itself goes to show that the accused had been borrowing the amount as mentioned in the Rokar and as relied by the complainant. The accused has not disputed his signatures on the Rokar and has also not denied receiving the amount of Rs.6,71,273/- vide cheque no.182313 from the complainant firm. CW1 was cross examined at length by the Ld. Counsel for the accused but he has not been able to bring out anything material from his testimony which could show that the witness was deposing falsely and that a false record has been produced by the complainant. The accused could have produced handwriting and finger print expert in order to show that the account books of the complainant's firm did not contain his signatures but no

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such effort had been made by the accused for the reasons best known to him."

A perusal of the same would show that several entries signed by the petitioner were duly exhibited and the petitioner could not produce anything on record to rebut the same and even no handwriting expert had been examined by the petitioner. Further, since the signatures of the petitioner on the cheque had not been disputed by the petitioner, thus, the presumption under Section 139 of the NIA was also raised against the petitioner. The trial Court after considering the entire evidence and the record as well as the relevant provisions of law, convicted the petitioner under Section 138 of NIA and sentenced the petitioner to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.7000/-, as detailed hereinabove.

The Additional Sessions Judge, Sri Muktsar Sahib, vide judgment dated 17.08.2021 after reconsidering the entire matter and documents and evidence on record, dismissed the appeal filed by the petitioner.

A perusal of said order would show that it has been recorded in paragraph 11 that the petitioner had admitted that he had received Rs.4,75,000/- and Rs.6,71,273/- in his saving bank account of Canara Bank, Sri Muktsar Sahib and also admitted his signatures on the cheque in question, which was dishonoured. It is against the abovementioned two orders that the present revision petition has been filed.

Learned counsel for the petitioner has submitted that a reference to the complaint would show that the amounts which have been mentioned from 02.05.2017 to 19.09.2017 would add up to Rs.11,65,900/- and thus, cheque for the amount of Rs.11,70,000/- could not be stated to be

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issued in order to discharge a legally enforceable debt. It is also argued by learned counsel for the petitioner that a perusal of the khata entries would show that in fact, an amount of Rs.6,71,273/- has come from the account of the complainant to that of the petitioner on 24.11.2017 and thus, reference to cheque dated 19.09.2017 for the same amount would show that the date of cheque is incorrect.

This Court has heard learned counsel for the petitioner and has perused the paper book.

Both the Courts have concurrently recorded that the petitioner has not disputed his signatures on the cheque rather, the defence taken by the petitioner as noted in paragraph 6 of the judgment of Chief Judicial Magistrate, Sri Muktsar Sahib, was to the effect that it was a blank signed cheque which was taken by the complainant as security. There is nothing on record to rebut the statement of accounts maintained by the complainant in ordinary course of business inasmuch as entries in the Rokar from Ex.C5 to Ex.C12, which are for the period starting from 02.05.2017 to 24.11.2017, have also been signed by the petitioner, would clearly show that there was a legally enforceable debt as the petitioner had been taking loan from the complainant time and again.

The Hon'ble Supreme Court of India in a case titled as **"Bir Singh vs. Mukesh Kumar"**, reported as ***2019(4) SCC 197,*** had held that the Court shall presume the liability of the drawer of the cheques for the amount for which the cheques are drawn and even in the aforesaid case, the cheque was stated to be a post dated cheque or a signed blank cheuqe which had been subsequently filled up by the complainant. The Hon'ble Supreme Court had also held that the revisional Court should not interfere in the

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absence of jurisdictional error. The relevant portions of the said judgment are reproduced hereinbelow:-

> *"20. As held by this Court in Southern Sales and Services and Others vs. Sauermilch Design and Handels GMBH, 2008(4)RCR (Civil) 729, it is a well established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative.*
>
> *xxx xxx xxx*
>
> *22. In Hiten P. Dalal vs. Bratindranath Banerjee3, this Court held that both Section 138 and 139 require that the Court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn. Following the judgment of this Court in State of Madras vs. Vaidyanatha Iyer, AIR 1958 Supreme Court 61, this Court held that it was obligatory on the Court to raise this presumption.*
>
> *23. 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 requires the prosecution to prove the case against the accused*

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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 (supra).

xxx xxx xxx

36. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

37. 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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38. 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.*

xxx xxx xxx

40. 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."

In the present case, the cheque issued had been duly signed by the petitioner. The same has been issued from the personal account of the petitioner and thus, there is a presumption against the petitioner, which in the present case has not even been remotely rebutted. The argument of the learned counsel for the petitioner to the effect that the total amount of Rs.11,65,900/- only stands proved as per the averments made in the complaint and not the entire amount of Rs.11,70,000/- and also the argument to the effect that one amount of Rs.6,71,273/- was in fact credited to the account of the petitioner on 24.11.2017 and not on 19.09.2017, also, does not remotely further the case of the petitioner. The aforesaid argument to the effect that the amount of Rs.6,71,273/- was credited to the account of the petitioner on 24.11.2017 from the account of the complainant would, in fact, show that the said amount had been paid by the complainant to the petitioner and even the said date 24.11.2017 is prior to the date of issuance

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of the cheque in question, i.e. 01.12.2017. In fact, the said fact proves the case of the complainant that amounts were paid to the petitioner on various occasions and it was for the recovery of the said amount that the cheque in question had been issued. The fact that the cheque was signed by the petitioner as also the fact that the statement of accounts (Rokar) were also signed by the petitioner at the time when various amounts were paid to the petitioner by the complainant would clearly prove that the cheque in question was issued for discharge of a legally enforceable debt.

Thus, keeping in view the abovesaid facts and circumstances, this Court finds no ground to interfere with the well reasoned orders passed by the Courts below. Accordingly, the present revision petition is dismissed.

As the main case stands disposed of, so no order is required to be passed in pending criminal miscellaneous application and the same is disposed of.

(VIKAS BAHL)
JUDGE

October 12, 2021
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No

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