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

CRR-1119-2021
Date of decision : 01.10.2021

Prem Rattan Sood

... Petitioner

Versus

M/s Arora Agro Chemicals Handiaya Bazar, Barnala and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Gaurav Sharma, Advocate
for the petitioner.
(Through Video Conferencing)

<u>VIKAS BAHL, J.(ORAL)</u>

In the present revision petition, challenge has been made to the judgment dated 09.02.2018 passed by the Judicial Magistrate Ist Class, Barnala and also the judgment dated 08.07.2021 passed by the Sessions Judge, Barnala. Vide judgment dated 09.02.2018, the Judicial Magistrate Ist Class, Barnala, on a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') by the respondent herein, convicted the petitioner under Section 138 of the Act and ordered the petitioner to undergo rigorous imprisonment for a period of two years and also to pay compensation of Rs.13,70,728/- to the complainant and also permitted the complainant to recover the same either from the petitioner or from his personal properties. The appeal of the petitioner therefrom was dismissed vide judgment dated 08.07.2021.

Briefly stated the case of the complainant (respondent herein) was that the complainant had dealings with the accused person (petitioner herein) and the petitioner was previously known to the respondent as he used to purchase pesticides on credit basis from the respondent. In order to discharge his liability, the petitioner had issued cheque no.011114 dated 25.12.2015 for a sum of Rs.13,70,728/- in favour of the respondent drawn from his personal account maintained with IDBI bank, Barnala. The said cheque on presentation was dishonoured vide memo dated 07.01.2016 due to insufficient funds and a legal notice dated 11.01.2016 was given to the petitioner demanding the cheque amount to be paid within 15 days but the petitioner did not make the payment nor gave any reply to the legal notice and thus, the present complaint under Section 138 of the Act was filed by the respondent.

The respondent had examined CW-1 Jasmeet Singh, Assistant Manager IDBI Bank who had produced the record regarding the cheque in question as well as proved the copy of inward cheque registered Ex.C5 and copy of inward checking inquiry Ex.C6 and the memo issued by the bank Ex.C2. The respondent got himself examined and submitted his affidavit Ex.CW2/A. He reiterated the allegations made in the complaint. CW2/ Complainant stated that the cheque in question was issued by the petitioner from his personal account and further proved the cheque Ex.C1, memo dated 07.01.2016 Ex.C2, legal notice dated 11.01.2016 Ex.C3, postal receipt Ex.C4 and closed the evidence. The statement of petitioner under Section 313 Cr.P.C. was recorded in which all the incriminating evidence was put to the petitioner, who pleaded not guilty. The petitioner in defence examined DW-1 Dr.Navkaran Singh who had deposed that after settling the account, the petitioner had demanded his cheque back from the respondent which was not given back. The petitioner got himself examined as DW-2 who deposed that the cheque in question was a security cheque. The primary plea taken in defence by the petitioner was that he had repaid the said money.

The Judicial Magistrate Ist Class observed that the issuance of cheque in question and dishonour of the same had been admitted by the petitioner. The defence of the petitioner to the effect that he had paid the said amount of money had been rejected by considering the cross-examination of DW-1, who had stated that there was no receipt given regarding the payment as alleged by the petitioner. It was further observed that even the original cheque had not been taken back. The Judicial Magistrate Ist Class held that the payment of the due amount was not even remotely proved in the present case and also observed that it could not be believed that a person who was a businessman would return the money without taking anything in writing and without even taking the so-called security cheque back. Even the conduct of the petitioner in his denying any business dealings with the respondent when he had appeared in the witness box, was taken note of. The argument to the effect that the cheque in question was a security cheque, was also rejected inasmuch as apart from other issues, the bills Ex.DA to Ex.DM which were produced by the complainant in his cross-examination on being called by the petitioner, were considered and it was seen that the said bills pertained to the period ranging between August 2015 till November 2015 and the amount of the said bills which were on credit, had not been shown to be paid and thus it was observed that the cheque in question could not be called a security cheque as the same had been issued on 25.12.2015, after the amount having become due on account of the above mentioned bills. It was noticed that the said bills were not even contested by the petitioner. Further reliance upon judgment of a co-ordinate bench of this Court titled as ***Shalini Enterprises vs. India Bulls***

Financial Service, reported as ***2013(2) CCC, 835*** was also placed and it was observed that even assuming that the same was a security cheques, even though the same was not proved, a security cheque, as per the abovesaid judgment, is an acknowledgement of the liability on the part of the drawer that the cheque holder may use for the discharge of the said liability. The argument of the petitioner to the effect that the said amount was actually due from the Sood Trading Company and thus, the said firm should have been made party, was also rejected by observing that DW-2 in his cross-examination had admitted that he was the proprietor of the said Sood Trading Company and the cheque had been issued from his personal account and had been signed by him in his personal capacity and thus, the petitioner could not evade his liability. Reliance in the said regard was made on the judgment of the Hon'ble Supreme Court in case titled as ***"Mainuddin Abdul Sattar Shaikh vs. Vijay D Salvi",*** reported as ***2015(3) RCR (Criminal) 593.*** It was further observed that there is a presumption under Section 139 of the Act in favour of the complainant and the said presumption had not been rebutted in the present case and thus, the petitioner was convicted under Section 138 of the Act and was sentenced to imprisonment and was also ordered to pay compensation as has been detailed hereinabove.

The appeal filed against the same by the petitioner was dismissed by the Sessions Judge, Barnala. The Sessions Judge, Barnala, had considered the entire material on record and re-appreciated the evidence. It was noticed that in fact, the petitioner, in spite of receipt of legal notice, had not submitted any reply and had not even denied the fact that he was the sole proprietor of Sood Trading Company. The bills Ex.DA to Ex.DM were duly considered and the amount of said bills was also considered and it was found that the said bills showed that the cheque had been issued for discharge of a legally enforceable debt. It was further observed that there was nothing on record to prove that the said bills had been discharged and even in case the averments of the petitioner with regard to his having paid Rs.20,000 to Rs.30,000 was taken into consideration, even then, the amount as mentioned in the bills would not stand discharged. The details of bills have been mentioned in para 13 of the judgment of the Sessions Judge, Barnala, the relevant portion of which is reproduced hereinbelow:-

> *"As per DW1 Navkaran Singh, amount of Rs.20 to 30 thousand was exchanged and even accused in his cross-examination has stated that he has paid Rs.32,000/- to Bhola Nath on 01.12.2015. The accused has got produced copies of bill of pesticides purchased by the accused from complainant. Those bills are Ex.DA of Rs.60,050/-, Ex.DB of Rs.6660/-, Ex.DC of Rs.23,850/-, Ex.DD of Rs.11,500/-, Ex.DE of Rs.6192/-, Ex.DF of Rs.79,200/-, Ex.DG of Rs.1,72,900/-, Ex.DH of Rs.1,25,750/-, Ex.DI of Rs.1,96,348/-, Ex.DJ of Rs.73,700/-, Ex.DK of Rs.32,500/-, Ex.DL of Rs.2,10,400/- and Ex.DM of Rs.3,15,900/- and all these bills are on credit basis. When accused has got produced these bills from the complainant and tender as exhibits as his own documents, then it was incumbent upon the accused to prove that he has paid the amount of these bills, but there is no evidence led by the accused to prove that he has discharged the liability of these bills. Merely*

paying the amount of Rs.20 to 30 thousand would not discharge the liability of accused."

All the arguments of the petitioner were rejected and the appeal was dismissed and the sentence awarded by the trial Court was upheld. Against these two orders, the present revision petition has been filed.

Learned counsel for the petitioner has primarily raised two arguments. The first argument of learned counsel for the petitioner is that in the present case, the dealing was with the firm Sood Trading Company, Barnala but the said firm / proprietorship has not been made accused. The second argument by learned counsel for the petitioner is that the cheque in question was a security cheque and for the said purpose, reference has been made to the cross-examination of CW-2 Bhola Nath where the said witness had stated that "It is correct that we take security cheque". On the basis of the said two arguments, learned counsel for the petitioner submits that the present revision petition deserves to be allowed.

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

In the present case, it is apparent from the judgment passed by the JMIC as well as Sessions Judge, Barnala that the entire material and evidence have been considered and the arguments raised by the petitioner have been considered and rejected. In the present case CW-1 Jasmeet Singh, Assistant Manager, IDBI Bank had produced the record regarding the cheque in question as well as proved the memo issued by the bank Ex.C2 and other relevant documents. CW-2 Bhola Nath has fully proved on record the cheque Ex.C1, Ex.C2, legal notice dated 11.01.2016 Ex.C3, postal receipt Ex.C4. The fact that the cheque was issued by the petitioner and was dishonoured has not been disputed. The defence sought to be raised by the petitioner to the effect that money had been paid, is on the face of it, false and concocted inasmuch as DW-1 Dr.Navkaran Singh had admitted in his cross-examination that neither any receipt was issued at the time of making of the alleged payment, nor the original cheque was taken back by the petitioner. It is impossible to believe that a businessman while dealing with the complainant party, who had issued the so called security cheque in their favour, would neither obtain any receipt of payment with respect to bills Ex. DA to Ex. DM, nor take the cheque back.

The first argument of learned counsel for the petitioner to the effect that the firm/ sole proprietorship Sood Trading Company has not been made an accused is fallacious and is thus, rejected. It is apparent from the record that DW-2 Prem Rattan Sood has not even denied the fact that he is the sole proprietor of the firm Sood Trading Company. It is further proved on record that the cheque in question has been issued by the petitioner in his personal capacity and from his personal account. The Hon'ble Supreme Court in ***Mainuddin Abdul Sattar Shaikh's*** case (supra) has held as under:-

> *"1.This appeal, by special leave, has been filed against the judgment and order dated 9.10.2007 passed by the High Court of Judicature at Bombay in Criminal Application No.646 of 2006, whereby the High Court has refused leave to appeal against the judgment of the Trial Court, to the appellant herein.*
>
> *xxx xxx xxx*
>
> *3.The aforesaid complaint filed by the appellant was taken up by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, and vide his order dated 15.12.2005 passed in C.C. No.5194/2003, the Metropolitan Magistrate*

acquitted the respondent. The reasons given for the acquittal of the respondent were that the Company M/s. Salvi Infrastructure Pvt. Ltd. was not made the accused and instead the respondent was made accused in his personal capacity. The cheque could not be said to have been issued for the discharge of whole or part of the liability because it exceeded the liability. Further, it had not been proved that the respondent was a person liable to make the payment for M/s. Salvi Infrastructure Pvt. Ltd.

xxx xxx xxx

6.The plea taken by the learned counsel for the respondent in the Court of Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, was that the Company had not been made an accused in the case. As per Section 141 of the NI Act, if the person committing an offence under Section 138 is a Company, every person who, at the time the offence was committed, was incharge of, and was responsible to the Company for the conduct of business of the Company as well the Company, shall be liable. In the complaint and the affidavit, M/s. Salvi Infrastructure Pvt. Ltd. was not made the accused. Further, it was argued that there was no averment that the accused was the person incharge of, and responsible for the affairs of the Company. In that case the accused was mentioned as the said person incharge. In the present case, the accused Vijay Salvi was made accused in his personal capacity.

xxx xxx xxx

10.About the liability under Section 138 of the NI Act, where the cheque drawn by the employee of the appellant company on his personal account, even if it be for discharging dues of the appellant-company and its Directors, the appellant-company and its Directors cannot be made liable under Section 138. Thus, we observe that in the abovementioned case, the personal liability was upheld and the Company and its Directors were absolved of the liability. The logic *applied was that the Section itself makes the drawer liable and no other person.*

xxx xxx xxx

11.Thus, in the light of the position which the respondent in the present case held, we are of the view that the respondent be made liable under Section 138 of the NI Act, even though the Company had not been named in the notice or the complaint. There was no necessity for the appellant to prove that the said respondent was incharge of the affairs of the company, by virtue of the position he held. Thus, we hold that the respondent Vijay D Salvi is liable for the offence under Section 138 of the NI Act.

xxx xxx xxx

15.Accordingly, this appeal is allowed and the impugned order passed by the High Court as also the order passed by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, are set aside. We direct that the respondent shall be taken into custody forthwith to undergo the sentence."

A perusal of the above judgment would show that it was held by the Hon'ble Supreme Court that even in a situation where an employee of the company had issued a cheque from his personal account for discharging the dues of the company, then also, the person who had issued the cheque, would be liable in case of dishonour of the said cheque. It was further held that in such a situation, it would not make a difference even if the company had not been made a party and acquittal of the accused by the Metropolitan Magistrate on the said ground and upholding of the same by the High Court was set aside by the Hon'ble Supreme Court. The case of the petitioner is on a better footing than the facts in the abovesaid case decided by the Hon'ble Supreme Court. In the present case, the petitioner is admittedly the sole proprietor of Sood Trading Company and the said fact has not been disputed before both the Courts below, nor before this Court. It is also apparent from the facts of the case and the evidence adduced that the petitioner, in order to discharge the said liability, had issued the cheque in question from his personal account. The argument which may be available in case of company on the plea that it is a juristic person, having a separate entity in law, would not be available to the present petitioner who is the sole proprietor of the proprietorship concerned. Moreover, at any rate, since the cheque had been issued by the petitioner in his personal capacity and from his personal account, the petitioner would be liable for the offence under section 138 of the Act as the cheque in question was dishonoured.

The second argument of the learned counsel for the petitioner to the effect that the cheque in question was a security cheque and thus the petitioner is not liable, is also misconceived and thus, rejected. In the present case, firstly, it has not been proved that the present cheque was a security cheque. From the perusal of the bills Ex.DA to Ex.DM, the details of amounts which have been referred to in para 13 of the judgment of Sessions Judge, Barnala, which has been reproduced hereinabove, would show that huge amount was outstanding and there was no proof of the petitioner having made the payment with respect to the said bills. The bills were pertaining to the period ranging from August 2015 till November 2015, as noticed in para 12 of the order of JMIC and were with respect to pesticides purchased by the petitioner from the complainant. Thus, the issuance of cheque dated 25.12.2015 which was after the period of the said bills cannot even be remotely said to be a security cheque and is certainly a cheque issued for paying the legally enforceable debt. Even as per the evidence of DW-1 Navkaran Singh, Rs.20,000 to 30,000 was said to have been paid, regarding which also there was no receipt produced, even if taken on face value, would show that the entire amount of the bills has not been paid. The reliance sought to be placed by learned counsel for the petitioner on the evidence of DW-2 also, does not further the case of the petitioner inasmuch as the line relied upon by the learned counsel for the petitioner only, at best, states that "It is correct that we take security cheque". The said line, does not prove that in the present case a security cheque was taken from the petitioner. Thus, it cannot be said that the cheque in question was a security cheque. Moreover, even assuming for the sake of argument in case the same was a security cheque, then also, since admittedly the amount was due and payment of the said amount has not been proved by the petitioner, then as per the judgment of co-ordinate Bench of this Court in ***Shalini Enterprises's***case (supra), the petitioner cannot escape liability on the ground that the cheque in question was a security cheque. The relevant portion of said judgment is reproduced hereinbelow:-

> *"His additional plea is that the cheque which was presented for encashment was actually a security cheque and hence no liability would arise by dishonour of such a cheque.*
>
> *xxx xxx xxx*
>
> *Additional plea of the petitioner that dishonour of a security cheque can not fasten the liability on the drawer under the Negotiable Instruments Act is also not acceptable. There can be no doubt regarding the fact that the security cheque is an integral part of the commercial process entered into between the Petitioner and Respondent/ Complainant. The security cheque is not only a deterrent for the drawer against dishonoring his financial commitment but can also be legally and validly utilized towards the discharging of the liability of the Drawer. It cannot by any stretch be argued that a security cheque is not handed over or issued in pursuance of any undischarged liability. To hold so would defeat the whole purpose of a security cheque. In the*

considered opinion of the Court, a security cheque is an acknowledgment of liability on the part of the drawer that the cheque holder may use the security cheque as an alternate mode of discharging his/its liability. Thus the argument of the learned counsel for the petitioner that on dishonouring of a security cheque no offence punishable under section 138 of the Negotiable Instruments Act is made out."

A perusal of the above judgment would show that it has been observed that even if a cheque is a security cheque, the same is an integral part of the commercial process and the same acts as a deterrent for the drawer against dishonouring his financial commitment and can also be used towards discharging the liability of the drawer. It is further held that to hold otherwise, would defeat the whole purpose of a security cheque. No judgment has been cited by the learned counsel for the petitioner to show any contrary view. Moreover, from the perusal of the bills Ex DA to Ex. DM, it is apparent that the amount in question was due and thus, the cheque in question was issued for discharging a legally enforceable debt.

No other point has been raised.

The judgment passed by the Judicial Magistrate Ist Class, Barnala as well as by the Sessions Judge, Barnala, are legal and valid and even the sentence of two years rigorous imprisonment and the compensation of Rs.13,70,728/- awarded are legal and valid, and thus, the said judgments and the sentence awarded are upheld and the present petition, being devoid of merit, is dismissed.

(VIKAS BAHL)
JUDGE

October 01, 2021
Davinder Kumar

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