105

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1432-2021 (O&M)
Date of decision : 16.11.2021

Kuldeep Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Digvijay Nagpal, Advocate for the petitioner.

Mr. N.K. Banka, DAG, Punjab.

****

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision Petition is to the judgment dated 11.01.2018 passed by the Judicial Magistrate Ist Class, Patiala, vide which the petitioner had been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and also to the order on quantum of sentence of even date, vide which the petitioner had been awarded the sentence which reads as follows:-

Name of the convict	*Convicted under Section*	*Sentence*
Kuldeep Singh	138 of Negotiable Instruments Act, 1881.	Rigorous imprisonment for a period of ten months and compensation equivalent the cheque amount alongwith 12% interest, per annum from the date of transaction till the actual realisation + SI of three months in default of compensation.

However, the payment of compensation shall be subject to result of appeal and revision, if any, preferred by the convict. Period of detention already undergone by the convict, if any, shall be set of against substantive sentence *of imprisonment. File be consigned to the record room after completing it in all respects."*

Challenge has also been made to the judgment 31.01.2020 passed by the Additional Sessions Judge, Patiala, vide which the appeal preferred by the petitioner against the abovesaid judgment dated 11.01.2018 and order on quantum of sentence of even date, had been dismissed.

Brief case of the prosecution is that a complaint was filed under Section 138 of the Act of 1881 read with Section 420 of the IPC, against the present petitioner for dishonour of cheque bearing No.000503 dated 30.06.2015 for a sum of Rs.1,00,000/- drawn on Oriental Bank of Commerce in favour of the complainant. It was the case of the complainant that the petitioner had borrowed a sum of Rs.1,00,000/- from the complainant on 18.02.2013 and had promised to return the same within a period of 8/9 months and the petitioner had initially issued a cheque bearing No.818365 dated 12.12.2013 amounting to Rs.1,00,000/- drawn on Punjab National Bank in favour of respondent No.2/complainant and the said cheque was dishonoured on account of "funds insufficient" vide memo dated 01.03.2014. Thereafter, the matter was reported to the petitioner and the present cheque dated 30.06.2015 was issued by the petitioner in favour of respondent No.2/complainant. Vide memo dated 02.07.2015, cheque dated 30.06.2015 was also dishonoured with the remarks "Funds Insufficient". A legal notice was served and thereafter, the complaint was filed.

The trial Court after considering the relevant documents and evidence on record, convicted the petitioner under Section 138 of the Act of

1881 and sentenced him, as has been detailed hereinabove.

Aggrieved against the said judgment, the petitioner had filed an appeal in the Court of Additional Sessions Judge, Patiala, who after considering the entire material on record including the evidence and the documents produced and after re-appreciating the same, dismissed the appeal of the petitioner. It is against the said order that the petitioner has filed the present criminal revision petition.

Learned counsel for the petitioner has submitted that in the present case, it was the relative of the complainant i.e. Babla, who is a money lender and the petitioner's son had taken a loan from Babla and had given one blank signed cheque to him as security to that loan. It is further argued that the petitioner's son had repaid the amount taken by him from Babla but however, since the cheque so given by him to Babla was not returned, thus, the cheque was misused by the complainant. He has also submitted that for the said aspect, the petitioner had examined his son namely, Harjinder Singh as DW1.

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

The petitioner has not disputed his signatures on the cheque in question. A joint reading of Sections 118 and 139 of the Act of 1881 would raise a legal presumption in favour of holder of the cheque that the same was received from the drawer in discharge of whole or in part of any legal debt or liability. Although, the said presumption is rebuttable but in the present case, no such fact is even prima facie proved on record to rebut the said presumption. Neither any document with respect to any loan having been taken from the said Babla has been produced nor there is any proof much less in writing, to even remotely show that any such loan was repaid. Both the Courts below have observed that the defence raised by the petitioner seems to be an afterthought inasmuch as once the alleged loan which was taken from Babla was returned, even then nothing in writing had been taken from the said Babla, clarifying that the cheque which was allegedly issued as a security cheque was not traceable and the amount was being returned. It was further observed that no complaint was filed by the petitioner with respect to the return of the cheque or for the alleged misuse of the same. It was also found that evidence of DW1, is contrary to the version given by the petitioner in the statement under Section 313 of Cr.P.C. inasmuch as per the evidence of DW1, who is son of the petitioner, the petitioner had given two blank cheques whereas as per the statement under Section 313 of Cr.P.C., it had been stated that the petitioner had given one blank signed cheque as security cheque. Thus, the defence sought to be put forth did not inspire confidence of both the Courts below.

This Court has also considered the plea of the petitioner and the defence sought to be raised in order to rebut the presumption, does not inspire any confidence and has thus, rightly been rejected by both the Courts below.

In the present case, it is not even remotely shown that the cheque in question which has been admittedly signed by the petitioner was issued as a security cheque. There is nothing on record to disbelieve the version of the complainant to the effect that the same was issued in order to discharge the legal enforceable debt of Rs.1,00,000/- which had been taken by the petitioner from respondent No.2/complainant. Moreover, even assuming for the sake of argument in case the same was a security cheque, then also, since the amount was due and payment/return 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 V. Indiabulls Financial Services Limited,*** *reported as* ***2013(2) CCC 835***, 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.

No other point has been raised.

In view of what has been observed above, the present Criminal Revision is dismissed.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

16.11.2021 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**