IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105

CRR-1486-2021 (O&M)
Decided on : 24.11.2021

Santosh Dhingra

. . . Petitioner

Versus

ICICI Bank Ltd. and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Mahipal S. Yadav, Advocate
for the petitioner.

Mr. Sarabjit Singh, AAG, Punjab
for respondent No. 2-State.

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VIKAS BAHL, J. (Oral)

Challenge in the present revision petition is to the judgment dated 02.02.2018 passed by the Judicial Magistrate 1st Class, Patiala vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act,1881 and has been sentenced to undergo rigourous imprisonment for 10 months and compensation equivalent to the cheque amount along with 12% interest per annum from the date of transaction to the actual realisation and simple imprisonment of 3 months in default of compensation.

Challenge is also to the judgment dated 11.10.2021 passed by the Additional Sessions Judge, Patiala vide which the appeal filed by the petitioner was dismissed.

Learned counsel for the petitioner has submitted that in the present case, there was no legally recoverable debt in as much as the cheque in question is dated 17.05.2016 and an amount of Rs. 3,58,00,000/- is stated therein, whereas, CW-1 in the cross examination has stated that an amount of Rs. 2,12,22,176/- is due as on 08.08.2016. It is thus argued that the amount which is due is lesser than the amount of cheque. It is further submitted that in the present case, the cheque that was given, was a blank

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cheque, as a guarantee for the loan advanced to M/s Jyoti Chemical and Fertilizers and in case of dishonour of a blank cheque, the offence under Section 138 of the Negotiable Instruments Act is not made out and the judgements and order of sentence of the Courts below deserve to be set aside on the said ground.

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

The fact that the cheque in question was signed by the petitioner, is not in dispute. Even the fact that the petitioner stood as a guarantor for the credit limit of Rs. 3,50,00,000/- which was given by the respondent No. 1-complainant vide account number 152151000003 and even a loan agreement was duly executed in this regard, is not disputed. When the amount owed to the complainant Bank was not paid and there was an outstanding amount, the cheque in question dated 17.05.2016 was issued by the petitioner, who is a relative of the accused No. 4 Sahil Dhingra, partner of M/s Jyoti Chemical and Fertilizers. As per the case of the complainant, the petitioner had assured the complainant- Bank that the said cheque would be encashed. However, when the said cheque was presented, the same was dishonored vide memo dated 19.05.2016 with the remark “funds insufficient”. Legal notice dated 26.05.2016 was served through registered post on 30.05.2016 and when no payment was made despite the same, a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed. The Judicial Magistrate 1st Class considered the statement of the petitioner under Section 313 Cr.P.C. and found that the petitioner had not denied his signature on the cheque in question and had not examined any defense witness. The fact that an amount was outstanding, was also not

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denied. Thus, considering the provisions of Section 139 of the Negotiable Instruments Act with respect to presumption in favour of the holder of the cheque as well as other evidence on record and the judgment of the Hon'ble Supreme Court in ***Anil Sachar and another versus M/s Shree Nath Spinners P. Ltd. and others reported as 2011(3) R.C.R. (Criminal) 698,*** wherein it has been held that if a company issued cheques as a consideration for supply of goods to its sister concern, in the event of the dishonor of the same, the drawer/company which issued the cheques would be liable, the Judicial Magistrate 1st Class, Patiala convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881. Specific reference was also made to the judgment of a Coordinate Bench of this Court in ***Gurmeet Singh versus state of Haryana reported as 2012(2) RCR (Criminal) 306*** wherein it was held that in case, the signature on the cheque had been admitted then the accused person could not escape his liability under Section 138 of the Negotiable Instruments Act, 1881 even if the amount, date and other particulars were filled up by some other person.

The Additional Sessions Judge, Patiala had also rejected all the arguments raised by learned counsel for the petitioner in appeal, which included the arguments raised before this Court, by observing that the cheque was dated 17.05.2016 and the same was presented on 19.05.2016 whereas the alleged statement of account which is sought to be relied upon by the petitioner is dated 08.08.2016 i.e., after the date of the cheque and its presentation and even after the date of the complaint dated 12.06.2016. It was further observed that no record with respect to the outstanding amount as on 17.05.2016 has been produced by the petitioner and the petitioner being a guarantor for M/s Jyoti Chemical and Fertilizers and the cheque

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2021.11.30 11:42
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having been signed by the petitioner and there being an amount due from M/s Jyoti Chemical and Fertilizers of which the Petitioner was a guarantor, were not disputed by the petitioner.

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. Even in the aforesaid case, the cheque was a signed blank cheque which had been subsequently filled up by the complainant. The Hon'ble Supreme Court in the said case had also held that the revisional Court should not interfere in the 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.*
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> *xxx xxx xxx*
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> *22. In Hiten P. Dalal vs. Bratindranath Banerjee, 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*

MEHAK HURIA
2021.11.30 11:42
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do not conflict with the presumption of innocence, which requires 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 (supra).

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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.

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.

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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."

MEHAK HURIA
2021.11.30 11:42
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Further, as per as per the judgment of co-ordinate Bench of this Court in ***Shalini Enterprises Vs. India Bulls Financial Service*** 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.*
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> *xxx xxx xxx*
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> *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 state

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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.

In the present case, the signature of the petitioner on the cheque, his being a guarantor for the credit limit given by Respondent No.1-Complainant and being a party to the loan agreement and also the fact that there was a huge amount outstanding on account of the non-payment by the loanee, has not been disputed. As per the argument of the learned Counsel for the Petitioner, an amount of Rs. 2,12,22,176 was due on 08.08.2016 and since, the said figure was subsequent to the date of issue of the cheque i.e. 17.05.2016, thus, the argument of the Petitioner that the amount which was due was lesser from the amount of the cheque, is rejected. The argument with respect to the cheque being a blank cheque is also rejected in view of the aforesaid facts as well as in view of the law laid down in ***Bir Singh*** (*supra*) and ***Shalini Enterprises*** (*supra*). The judgments of both the Courts below are well reasoned and detailed and there is no jurisdictional error or misreading of any evidence so as to call for interference by this Court and accordingly, the present revision petition is dismissed.

Pending miscellaneous application, if any, shall also stands disposed of, in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

24th November, 2021
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Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No

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