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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-464-2022 (O&M)
Date of decision : 10.03.2022

Ranjit Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jasjeet S. Dhaliwal, Advocate for the petitioner.

Mr. R.S. Khaira, AAG, Punjab.

(Through Video Conferencing)

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VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment dated 02.11.2019 passed by the Judicial Magistrate Ist Class, Fazilka, in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the Act of 1881") by the private respondent, vide which the present petitioner has been convicted under Section 138 of the Act of 1881 and has been sentenced to undergo rigorous imprisonment for a period of two years and he has also been directed to pay compensation of Rs.6,00,000/- to the complainant (respondent No.2 herein) within a period of two months from the date of passing of the said judgment.

Challenge has also been made to the judgment dated

03.12.2021 passed by the Additional Sessions Judge, Fazilka, vide which appeal preferred by the present petitioner, has also been dismissed.

Learned counsel for the petitioner has submitted that in the present case, the petitioner had taken a loan from his cousin namely Parampaljeet Singh and a security cheque had been given to the said Parampaljeet Singh who had misused the same by giving the same to the complainant (respondent No.2) and the said cheque was only a security cheque. It is further submitted that the documents, which had been produced by the petitioner, have not been taken into consideration by the Court below and the petitioner has reasonable defence in the present case.

This Court has considered the arguments raised by the learned counsel for the petitioner and has perused the paper book.

Complaint was filed under Section 138 of the Act of 1881 by respondent No.2 against the present petitioner on the allegations that on account of friendly terms, respondent No.2 (complainant) had advanced a sum of Rs.5,50,000/- to the petitioner in April, 2016 and the petitioner had agreed to pay back the said amount within a few months and in order to discharge his liability, the petitioner had issued cheque bearing No.094299 dated 08.12.2017 amounting to Rs.5,50,000/- drawn on State Bank of Patiala (now merged with State Bank of India), Arniwala Branch, Fazilka, in favour of the complainant with the assurance of its encashment. It was further the case of the respondent that the said cheque was presented for encashment but was dishonoured and returned unpaid with cheque return memo dated 12.12.2017 with the remarks "funds insufficient". A legal notice dated 10.01.2018 was also served upon the petitioner and on failure on the part of the petitioner to make the payment, the complaint under Section 138 of the Act of 1881 was filed. The complainant had supported his case by stepping into the witness box as CW1 and had proved on record the original cheque as Ex.C1, Return Memo dated 12.12.2017 as Ex.C2, Legal Notice dated 10.01.2018 as Ex.C3 and postal receipt as Ex.C4 and thereafter, had closed his evidence and thereafter, the statement of the petitioner was recorded under Section 313 Cr.P.C. and he had led his evidence.

The trial Court, after considering the entire material, had convicted the petitioner under Section 138 of the Act of 1881 and sentenced him to undergo imprisonment as has been detailed hereinabove. The petitioner had filed an appeal before the Additional Sessions Judge, Fazilka. The Additional Sessions Judge, Fazilka had noticed in para 12 of its order dated 03.12.2021 that the petitioner had not disputed his signatures on the cheque and had not even denied their issuance thereof by him. The plea raised by the petitioner to the effect that the same had been issued by the petitioner for giving the same to his cousin Parampaljeet Singh for security purpose and the said Parampaljeet Singh had given the same to the complainant, has been rejected on the ground that the petitioner had failed to state as to why the petitioner had given the said cheque to his cousin, which bore his signatures. It was further observed that there was presumption in favour of respondent No.2 under Section 118(b) read with Section 139 of the Act of 1881. It was further observed that the said presumption had to be rebutted by the accused/petitioner and there was nothing shown by the petitioner to rebut the said presumption. It was observed in para 22 of the judgment that the complainant had prima facie proved that a sum of Rs.5,50,000/- had been advanced by him and a cheque had been issued to the complainant (respondent No.2) by the petitioner, which bore his signatures. The said cheque was dishonoured on account of "funds insufficient" which had been proved on record as Ex.C2 and the Legal Notice issued to the petitioner dated 10.01.2018 had also been proved on record as Ex.C3.

The fact that the petitioner had signed the cheque and the cheque was issued by him, has not been disputed before this Court. Even in case, where it was plea of the accused that he had issued a signed blank cheque which had been subsequently filled by the complainant, the Hon'ble Supreme Court of India, in 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. 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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> *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 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."

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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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 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 fact that the petitioner has issued a cheque and same has been signed by him, has not been disputed. The Appellate Court had noticed that the cheque bore the signature of the petitioner and no reasons had been given by the accused/petitioner as to why he had given a cheque bearing his signatures to his cousin Parampaljeet Singh. Even the plea raised by the petitioner before this Court to the effect that the cheque in question had been given to his cousin namely Parampaljeet Singh, on account of his having taken a loan from his cousin, has no legs to stand as no document has been produced on record to substantiate the same. Moreover, nothing has been shown to this Court to prove that the loan stated to have been taken from his cousin was repaid to the said cousin by the petitioner. The said plea raised, does not even remotely rebut the presumption which has been raised against the present petitioner.

Both the Courts below have considered the entire material on record and after due appreciation of the same, have held the present petitioner guilty of the offence under Section 138 of the Act of 1881. There is no jurisdictional error or misreading of any evidence so as to call for interference by this Court and accordingly, the present Criminal Revision is dismissed.

Since, the main case has been decided, application bearing CRM-9066-2022, for suspension of sentence of applicant-petitioner, is rendered infructuous and is disposed of as such.

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

10.03.2022 **(VIKAS BAHL)**
Pawan **JUDGE**

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

Whether reportable:- **Yes/No**