

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-326-2021

Date of decision : 17.05.2022

Gurmail Singh

... Petitioner

Versus

Jagjit Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Dr.Rau P.S. Girwar, Advocate for
Mr.Sandeep Kumar Bansal, Advocate
for the petitioner.

Mr.Munish Garg, Advocate
for the respondent.

VIKAS BAHL, J.(ORAL)

Challenge in the present revision petition is to the order dated 18.01.2021 passed by the trial Court, District Barnala vide which interim compensation under Section 143-A of the Negotiable Instruments Act, 1881 (in short "N.I. Act") was allowed and the present petitioner was directed to pay 20% cheque amount within 60 days to the complainant.

Learned counsel for the petitioner has submitted that in the present case, although in the complaint dated 03.01.2020, it has been stated that the petitioner in discharge of his partial liability issued cheque no.018966 dated 05.11.2019 for an amount of Rs.6,70,000/-, has been mentioned but it has not been mentioned as to what was the liability of the petitioner or what the original amount of debt was. It has been submitted that thus, no order could have been passed directing the petitioner to pay

interim compensation.

Learned counsel for the respondent, on the other hand, has argued that neither the complaint nor the summoning order has been challenged in the present case and the challenge is only to the order directing the petitioner to pay interim compensation to the extent of 20% of the cheque amount which is in accordance with the amendment to Section 143(2) vide the Negotiable Instruments (Amendment) Act, 2018. It has further been submitted that the issuance of the cheque has not been disputed and as per settled law, a presumption operates in favour of the holder of the cheque and has further stated that as per settled law, the Court is to presume the liability of drawer of the cheque for the amount which has been mentioned in the cheque.

This Court has heard learned counsel for the parties and has perused the record.

A perusal of the impugned order would show that on 18.01.2021, the petitioner/accused had appeared and notice of accusation under Section 138 of the N.I. Act had been served upon the accused to which the petitioner has not pleaded guilty and claimed trial. As per Section 143(2) of the N.I. Act, brought about by virtue of amendment vide the Negotiable Instruments (Amendment) Act, 2018, the petitioner was directed to pay interim compensation of 20% of cheque amount within 60 days. Section 143(A) of the N.I. Act is reproduced hereinbelow:-

‘143A. Power to direct interim compensation.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

(a) in a summary trial or a summons case, where he pleads

not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.”

A perusal of the above would show that in a case where Court is trying an offence under Sections 138 the trial Court has discretion to order the drawer of the cheque to pay an interim compensation to the complainant in a summary trial or in a summons case where he pleads not guilty to the accusation made in complaint and in any other case upon framing of charge and said interim compensation is not to exceed 20% of the amount of cheque. It is, thus, apparent that the impugned order passed, is in sync with the provisions under Section 143-A of the N.I. Act, thus, no fault can be found in the impugned order. The argument of learned counsel for the petitioner to the effect that the original amount of debt has not been

been stated, is misconceived inasmuch as, it is not the complaint and the summoning order which are under challenge but it is the order directing the petitioner to pay interim compensation under Section 143(2) N.I. Act, which is under challenge. Further in the complaint, there is a specific mention that the cheque bearing no.018966 dated 05.11.2019 for an amount of Rs.6,70,000/- was issued by the petitioner. The Hon'ble Supreme Court in a case titled as **“Bir Singh vs. Mukesh Kumar”** reported as **2019(4) SCC 197** has held that the Court shall presume the liability of the drawer of the cheque for the amount for which the cheque is drawn. 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.”*

No judgment has been cited by the learned counsel for the petitioner to show any contrary view.

In the present case, it is not disputed by learned counsel for the petitioner that the cheque has been signed by him and the sole argument raised by the petitioner is that the entire amount or nature of debt which the petitioner might have taken from the complainant has not been detailed in the complaint. In view of the above said judgment and also in view of the

facts stated hereinabove, the said argument is misconceived and is accordingly, rejected.

The present petition being sans merit, thus, is dismissed.

(VIKAS BAHL)
JUDGE

May 17, 2022
Davinder Kumar

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