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

CRR-703-2022 (O&M)

Date of decision : 19.04.2022

Amarjit Singh Kundu

...Petitioner

Versus

Baljeet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Mohit Garg, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment/order dated 12.03.2018/15.03.2018 vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and has been sentenced for simple imprisonment for a period of one month and has been further directed to pay the compensation of the cheque amount i.e. Rs.1,00,000/- to the complainant and in default of the said payment, to further undergo simple imprisonment for a period of three months.

Challenge has also been made to the judgment dated 05.04.2022 passed by the Additional Sessions Judge, Hisar vide which the appeal preferred by the petitioner has been dismissed and sentence has been upheld.

Learned counsel for the petitioner has submitted that in the present case, there is no proof regarding the fact that a friendly loan was given by the complainant to the petitioner and even the date of the said loan has not been mentioned. It is further submitted that a blank cheque was given as a security to the complainant by the petitioner and the dispute had arisen between the petitioner and the complainant as the complainant had told the petitioner to sell the vehicle loaded with chicks without the knowledge of the company and the petitioner had refused to do the same and thereafter, the complainant did not allow the vehicle of the petitioner to leave the poultry farm unless the petitioner paid him Rs.54,000/-. It is argued that when the petitioner had paid an amount of Rs.54,000/- to the complainant then the petitioner also gave the cheque in question as a security to the complainant. It is also argued that the complainant had returned Rs.4000/- to the petitioner. It is contended that the said security cheque has been misused by the complainant.

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

Both the Courts below had concurrently found that an amount of Rs.1,00,000/- was advanced by the complainant to the petitioner as a friendly loan and the date of the said advancement of loan was stated to be 15.03.2016, which fact transpires from the cross-examination of the complainant. It had further been found that the complainant had sold his buffalo and had advanced the said amount of Rs.1,00,000/- to the petitioner from the sale of the same. With respect to the fact that there were friendly relations between the parties, it was observed that even during cross-

examination of CW1 as well as when the statement under Section 313 Cr.P.C. was recorded, it was the defence taken by the present petitioner that he had taken poultry farm of the complainant-Baljeet Singh on rent and he used to pay a monthly rent to the complainant and even DW1 and DW2 have deposed to the effect that the said alleged poultry farm was being run by the petitioner. It was observed that even from the suggestions and the defence put by the petitioner, it was found that defence initially sought to be taken that petitioner and complainant were strangers, was false and that there was a relationship between the parties. With respect to the financial capacity of the complainant, it was observed that the complainant owned 10.5 acres of land and as stated hereinabove, he had sold his buffalo in March, 2016 for a sum of Rs.1,00,000/-. In judgment dated 05.04.2022 passed by the Additional Sessions Judge, Hisar, reliance had been placed upon the judgment of the Hon'ble Supreme Court in **Rohitbhai Jivanlal Patel Vs. State of Gujarat and another**, reported as **2019(18) SCC 106**, in which it was held that a presumption is drawn under Sections 118 and 139 of the Act of 1881 in favour of the person to whom the cheque has been given and thus, the Courts are not supposed to approach the case in a manner so as to question the want of evidence on the part of the complainant as regards the source of funds for advancement of loan to the accused. It was further held that after such presumption has been drawn, onus shifts upon the accused person and it is for him to discharge the said onus. It was found in the present case that such onus has not been even remotely discharged. It was further observed that the petitioner had admitted the fact that he had signed the cheque. On the said aspect, reliance had been

placed by the Additional Sessions Judge, Hisar in its judgment dated 05.04.2022, upon the judgment passed by the Hon'ble Supreme Court in **M/s Kalamani Tex and another Vs. P. Balasubramanian** reported as **(2021) 2 Scale 434**, in which it was held that once the signatures on the cheque are admitted, the Courts are required to presume that the cheque is issued for consideration and for the discharge of a legally enforceable debt. In para 26 of the judgment dated 05.04.2022, the Appellate Court had observed that CW1 had specifically stated that the cheque Ex.P1 was handed over to him by the accused in a duly filled form at his residence on 18.04.2016 and the petitioner while deposing as DW3 in his cross-examination had categorically admitted that cheque Ex.P1 was filled by him and it bears his signatures. With respect to the pleas in defence, which are sought to be taken by the petitioner, it was observed that no evidence was produced on record so as to even remotely rebut the presumption in favour of the holder of the cheque (i.e. complainant). The said observations made by the Courts have not even been contradicted by the learned counsel for the petitioner before this Court. The plea of defence sought to be raised is absolutely baseless as there is no material much less, prima facie material to substantiate the same. The findings of the Courts below are neither perverse nor illegal.

In the present case, it is not in dispute that the cheque in question bears the signatures of the petitioner. The factum of there being a relationship between the parties is also proved beyond doubt on the record. The fact that the complainant had a financial standing to advance the friendly loan to the petitioner is also prima facie proved from the evidence

on record to the effect that he owns 10.5 acres of land and had also sold his buffalo in the month of March, 2016, which facts have not been rebutted either before the Courts below or before this Court.

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 had been 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.

The Hon'ble Supreme Court in ***Rohitbhai Jivanlal Patel's case*** (Supra), has held as under:-

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17. In the case at hand, even after purportedly drawing the presumption under [Section 139](#) of the NI Act, the Trial Court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the Trial Court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his

favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant.

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The observations of the Trial Court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in know of facts etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of [Sections 118](#) and [139](#) of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not.

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21. The result of discussion in the foregoing paragraphs is that the major considerations on which the Trial Court chose to proceed clearly show its fundamental error of approach where, even after drawing the presumption, it had proceeded as if the complainant was to prove his case beyond reasonable doubt. Such being the fundamental flaw on the part of the Trial Court, the High Court cannot be said to have acted illegally or having exceeded its jurisdiction in

reversing the judgment of acquittal.

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The law laid down in the above-reproduced judgment would apply to the facts of the present case. Moreover, there is no illegality or infirmity in the judgments passed by both the Courts below and accordingly, the present Criminal Revision being sans merit is thus, dismissed.

Since, the main case has been decided, application bearing CRM-13845-2022 for stay of compensation and application bearing CRM-13846-2022 for suspension of sentence of applicant-petitioner are rendered infructuous and are disposed of as such.

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

19.04.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No