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

CRM-18269-2022 in/and
CRR-910-2022 (O&M)
Date of decision : 18.05.2022

Ashok Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rakesh Kaundal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-18269-2022

This is an application filed under Section 482 of Cr.P.C. for preponement of the date of hearing in the main case which is now stated to be listed for 31.05.2022 to an early date.

Learned counsel for the applicant-petitioner has submitted that the applicant-petitioner was not aware that the matter has been listed on 07.05.2022 and was under the impression that the case would be taken up on 09.05.2022 and submits that even notice of motion has not been issued in the present case and thus, prays the date of hearing in the main case be preponed.

Notice in the application.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the non-applicant/State of Haryana and has submitted that he has no objection in case the present application is allowed and the date of hearing in the main case is preponed from 31.05.2022 to today itself for final disposal.

In view of the aforesaid facts and no objection from the opposite side, the present application is allowed and the date of hearing in the main case is preponed from 31.05.2022 to today and the same is taken on Board today itself for final disposal.

Main case

Challenge in the present Criminal Revision is to the judgment dated 22.05.2019 passed by the Judicial Magistrate Ist Class, Gurugram, vide which, the petitioner has been convicted in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and order dated 23.05.2019 vide which, the petitioner has been sentenced to undergo rigorous imprisonment for a period of two months for the commission of offence and to pay compensation to the tune of Rs.4,00,000/- on account of harassment caused to the complainant.

Challenge has also been made to the judgment dated 18.04.2022 passed by the Additional Sessions Judge, Gurugram, vide which, appeal filed by the present petitioner has been dismissed.

Learned counsel for the petitioner has submitted that in the

present case, as per Ex.C1, the complainant had entered into an agreement dated 27.07.2014, which was signed by the petitioner with respect to sale of buffaloes/calves, as per which, total sale consideration was Rs.72,000/- and the installment which had to be paid by the complainant was Rs.6,000/- per month. It is further submitted that as per the said agreement, it was the petitioner who had to sell the buffaloes to the complainant for a total consideration of Rs.72,000/- and for the said purpose, the petitioner had given a security cheque which had been misused by the complainant and the present complaint had been instituted. It is argued that total amount of two cheques i.e. Rs.2,82,700/- is in excess of the sale consideration of Rs.72,000/- and thus, no legally enforceable debt beyond Rs.72,000/- had arisen.

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

A perusal of the judgments of both the Courts below would reveal that as per the case of the complainant, the daily installments of Rs.200/- were to be paid from 27.06.2014 and thus, there was a legally enforceable debt of an amount of Rs.2,82,720/- in the year 2017 in lieu of which, the petitioner had issued two cheques bearing No.802601 dated 06.09.2017 of an amount of Rs.1,00,000/- and No.802584 dated 12.08.2017 of an amount of Rs.1,82,700/- and both the said cheques were signed by the petitioner in his individual capacity and the said cheques were presented and were dishonoured with the remarks "Funds Insufficient" on 08.09.2017 and thereafter, legal notice dated 16.09.2017 was issued to the petitioner through registered post but the petitioner did not make the payment. It was

observed in para 4 of the judgment passed by the trial Court as well as in para 15 of the judgment passed by the Appellate Court that the cheques in question bore the signatures of the petitioner. The said fact has not been disputed before this Court. Thus, both the Courts below had correctly raised the presumption under Section 139 as well as under Section 118 of the Act of 1881 in favour of the complainant. It was for the petitioner to have rebutted the said presumption. In order to rebut the said presumption, the defence taken by the petitioner, as noticed in para 4 of the judgment of the trial Court, was that the complainant and some other workers had stolen some cheques and had misused the same. However, as has been noticed in paras 8 and 13 of the judgment passed by the trial Court, suggestion which was given at the time of cross-examination to the complainant was that the cheque was issued as a security. The Courts below have rightly observed that the said two pleas are contradictory and thus, the defence sought to be taken in order to rebut the presumption in favour of the complainant was not tenable in law. The argument raised before this Court that the petitioner had given the said cheque as a security cheque is thus, contrary to the defence taken by the petitioner before the trial Court and thus, is apparently false. Moreover, the daily payment of Rs.200/- had started on 27.06.2014 whereas, the dates of the cheques were 06.09.2017 and 12.08.2017 and thus, the said cheques were issued three years after the installments had started by the complainant and the said fact also proves that the same were not security cheques as security cheques are issued in order to secure a payment at the time when the payment is made. At any rate, even if the said cheques are taken to be security cheques, then also, same would not further the case of

the petitioner inasmuch as, there is no proof that the petitioner had complied with the obligation for which the security cheques had allegedly been given by the petitioner. A Coordinate Bench of this Court in **Shalini Enterprises Vs. India Bulls Financial Service** reported as **2013(2) CCC 835**, has held 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. The relevant portion of ***Shalini Enterprises's case*** (Supra) 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. Moreover, as observed in para 14 of the judgment passed by the Appellate Court, passbook Ex.C2 has been relied upon by the complainant to show that different amounts were deposited by the complainant and the said factor would also prove that there was legally enforceable debt. The said observations have not been rebutted during the course of arguments before this Court nor the said passbook Ex.C2 has been annexed to show that there was any perversity in the said finding. The petitioner has placed reliance on Ex.C1 which also does not further the case of the petitioner and rather by placing reliance upon the same, the petitioner has admitted the factum of the existence of a business relationship between him and the complainant and has also admitted the fact that the installments

were to be paid by the complainant to him. Moreover, there is nothing on record to show that even as per Ex.C1, the buffaloes were ever delivered by the petitioner to the complainant.

The trial Court in its judgment had correctly observed in paras 15 and 16 that the main documents on which the complaint is based are the cheques, which were duly signed by the petitioner in his individual capacity and passbook and Sale Registration Letter are just corroborative pieces of evidence supporting the case of the complainant. The argument sought to be raised by the petitioner with respect to total sale consideration of the buffaloes to be sold to the complainant amounting to Rs.72,000/- being lesser than amount of Rs.2,82,700/-, was neither raised as a plea of defence during the course of trial as the plea of defence has been noticed in para 4 of the judgment of the trial Court which does not include the above plea, nor any argument to the said effect has been raised before either of the Courts below. It has not even been shown that any such suggestion was put to any witness with respect to the plea now sought to be raised. As has been observed hereinabove, even the passbook Ex.C2 has not been placed on record. The Hon'ble Supreme Court 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.”

The abovesaid judgments as well as judgments relied upon by the Appellate Court i.e. **Hiten P. Dalal Vs. Bratindranath Banerjee** reported as **(2001) 6 SCC 16** and **K.N. Beena Vs. Muniyappan**, reported as **AIR 2001 SC 2000**, would fully apply to the present case. No illegality or

perversity has been shown in the order/judgment passed by the Courts below so as to call for interference of this Court in the present Criminal Revision.

Keeping in view the abovesaid facts and circumstances, the present Criminal Revision is dismissed.

Since, the main case has been decided, application bearing No.CRM-16933-2022, for suspension of sentence and compensation, 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.

18.05.2022

Pawan

(VIKAS BAHL)
JUDGE

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

Whether reportable:- **Yes/No**