

108
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1006-2022 (O&M)
Date of decision : 13.07.2022

Amarjit Singh

...Petitioner

Versus

Mohinder Singh (since deceased) through his LR

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. F.S. Virk, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment dated 02.01.2019, vide which, the Judicial Magistrate Ist Class, Patiala had convicted the present petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) as well as quantum of sentence dated 02.01.2019 vide which the petitioner had been sentenced as under:-

Name of the convict	Convicted under Section	Sentence
Amarjeet Singh	138 of Negotiable Instruments Act, 1881	Simple imprisonment for a period of one year and compensation equivalent to cheque amount i.e. Rs.15,00,000/- along with simple interest @ 9% p.a. In case of default simple imprisonment of three months.

Challenge has also been made to the judgment dated

22.11.2021 vide which the appeal filed by the present petitioner had also been dismissed by the Sessions Judge, Patiala.

Learned counsel for the petitioner has submitted that in pursuance of order dated 17.05.2022 passed by this Court, the petitioner has surrendered and has further submitted that in the present case, execution proceedings are pending and thus, either the impugned judgments should be set aside or the sentence part should be reduced.

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

It is not in dispute that complaint was filed by the complainant-Mohinder Singh (since deceased represented by his legal representative namely Jasvir Singh) by alleging that the agreement to sell dated 05.07.2012 had been entered into between the petitioner (seller) and the said Mohinder Singh with respect to selling the land measuring 46 bighas 14 biswas situated at Village Ramgarh Chhanna and an amount of Rs.80,00,000/- was paid as earnest money and the date for execution of the sale deed was fixed as 15.01.2013 and on the said date, the date was extended to 28.02.2013, for which, a separate writing was executed between the parties. It is further the case of the complainant that on 07.02.2013 on the request made by the present petitioner, the complainant had paid a further amount of Rs.6,25,000/- to the present petitioner towards earnest money and a writing regarding the same was also executed between the parties and when the petitioner expressed his inability on 28.02.2013 to execute the sale deed, the time for execution

was further extended to 04.03.2013 and then to 06.05.2013, regarding which, separate writings were executed. It was found that as per jamabandi, the land in question was mortgaged with the bank but the petitioner had given an undertaking that he would get the land redeemed before execution of the sale deed and later on, it transpired that the petitioner was not exclusive owner of the said land and rather he was co-sharer in the land measuring 132 bighas 15 biswas and he had already sold the land of his share to some other persons and large number of persons had filed suits against the petitioner. It is the case of the complainant that as per the settlement arrived at between the parties, double the amount of the earnest money had to be returned to the complainant and thus, when the petitioner refused to return the same, he filed the suit for recovery of Rs.1,72,50,000/- against the petitioner on the basis of the said agreement and in the month of October, 2013, the petitioner had approached the complainant and offered to compromise the matter and issued a cheque dated 10.10.2013 for an amount of Rs.86,00,000/- and another cheque dated 17.10.2013 for an amount of Rs.15,00,000/- both drawn on Axis Bank. However, the said cheques were dishonoured, and after the petitioner failed to make the payments despite the legal notice, the complaint under Section 138 of the Act of 1881 was filed.

The complainant-Mohinder Singh is since deceased and vide order dated 06.10.2016, Jasvir Singh was impleaded as party (complainant) in the complaint.

The trial Court, after considering the entire evidence on record, had convicted the petitioner under Section 138 of the Act of 1881 and sentenced him as detailed hereinabove. The appeal was also dismissed by the Appellate Court and while dismissing the appeal, the relevant documents were duly taken into consideration, which included the agreement dated 05.07.2012 Ex.C2 showing the receipt of Rs.80,00,000/- by the petitioner as earnest money, the writing dated 07.02.2013 Ex.C4 whereby the petitioner had received Rs.6,25,000/- from the complainant as additional earnest money, the writing dated 28.02.2013 Ex.C5 vide which, date of execution of the sale deed had been extended, the cheque dated 17.10.2013 for Rs.15,00,000/-, produced and proved on record as Ex.C9 and the cheque dated 10.10.2013 for Rs.86,00,000/- as Ex.C11.

The Appellate Court had also taken into consideration the Panchayati Rajinama/compromise dated 16.07.2014 which was executed between the complainant and the present petitioner and proved on record as Ex.CW2/A and as per the said compromise, the petitioner had agreed to pay Rs.1,05,00,000/- to the complainant in full and final satisfaction of his claim and had issued four cheques bearing cheque no.383088 dated 25.8.2014 for Rs.26,25,000/-, cheque no.383089 dated 25.9.2014 for Rs.26,25,000/-, cheque no.383090 dated 25.10.2014 for Rs.26,25,000/- and cheque no.383091 dated 25.11.2014 for Rs.26,25,000/-. However, since the said compromise did not materialize, the complainant had proceeded with the present complaint. It was also noticed that civil suit

for recovery had also been partly decreed vide judgment and decree dated 06.10.2017 and decree for an amount of Rs.86,25,000/- with interest @ 9% per annum from the date of agreement till filing of the suit and pendente lite and future interest @ 6% per annum had been passed in favour of the complainant. The sole argument raised by the petitioner before the Appellate Court to the effect that the said cheques were security cheques was also rejected.

This Court has gone through the judgments of both the Courts below and finds that there is no illegality, infirmity or perversity in the same. It is proved beyond doubt that there was a legally enforceable debt inasmuch as the complainant had given earnest money vide agreement dated 05.07.2012 Ex.C2 and had also further given an amount of Rs.6,25,000/- vide writing dated 07.02.2013 Ex.C4 as additional earnest money. The issuance of the cheques in question or the signatures on them have not been disputed. It is not the case of the petitioner that he has repaid the said amount and thus, even in case, the sole plea of the petitioner, to the effect that the cheques were security cheques is taken to be true on its face value, then also, the same would not further the case of 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. 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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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. At any rate, the petitioner has not been able to prove that the cheques in question were security cheques.

Further, reliance sought to be placed by the learned counsel for the petitioner upon the Civil Court judgment, vide which, decree for an amount of Rs.86,25,000/- has been passed against the petitioner and also the execution proceedings would go against the petitioner, inasmuch as, it is not the case of the petitioner that the said amount has been paid by the petitioner in execution of the said decree and the same also substantiates the fact that there was a legally enforceable debt. Moreover, no law has been cited by the learned counsel for the petitioner in support of any of his submissions.

Before parting, it would also be relevant to note the conduct of the present petitioner. The petitioner, as has been noticed in para 17 of the judgment of the Appellate Court, had initially not appeared before the trial Court and had been declared a proclaimed person. Even before the Appellate Court, after being granted bail, he stopped appearing and did not appear for a period of almost two years and thus, the Appellate Court had to issue warrants of arrest against the petitioner and even the present Criminal Revision was filed when the petitioner had not surrendered and it is only after the order was passed by this Court on 17.05.2022, that the petitioner is stated to have surrendered. In the facts and circumstances of the present case, this Court is of the opinion that no leniency should be shown to the petitioner, even with respect to the sentence awarded.

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

Since, the main case has been decided, application bearing CRM-18121-2022 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

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

13.07.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**