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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1044-2022 (O&M)
Date of decision : 19.05.2022

Kamna Kukreti

...Petitioner

Versus

Krishan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Abhishek Yadav, Advocate for the petitioner.

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VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment dated 08.10.2015 passed by the Judicial Magistrate Ist Class, Gurgaon, 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 to undergo simple imprisonment for a period of six months and has also been directed to pay compensation to the tune of Rs.2,00,000/- to the complainant.

Challenge has also been made to the judgment dated 04.05.2022 passed by the Additional Sessions Judge, Gurugram, vide which an appeal filed by the petitioner has been dismissed.

The sole argument raised by learned counsel for the petitioner is that in the present case, although, cheque was signed by the petitioner but the same was from the joint account of the petitioner and her husband and the petitioner could not be prosecuted for the same.

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

It was the case of the complainant that accused and complainant were having friendly relationship and in the month of April, 2011, friendly loan amounting to Rs.1,50,000/- was taken which was promised to be discharged and in discharge of the said liability, cheque bearing No.4541475 dated 20.06.2013 amounting to Rs.1,50,000/-, was issued and was signed by the present petitioner and when the same was presented, then vide memo dated 29.06.2013, the same was dishonoured with remarks "Funds Insufficient". Legal notice dated 13.08.2013 was issued and when the payment was not made, the complainant filed complaint under Section 138 of the Act of 1881.

The complainant appeared as CW1 and produced on record the original cheque, cheque return memos, copy of legal notice and postal receipts.

The trial Court as well as Appellate Court, after considering the entire evidence and documents on record, have convicted the petitioner under Section 138 of the Act of 1881.

The Appellate Court, in para 16 of its judgment, had observed that it was not in dispute that cheque in question bore the signature of the petitioner and dishonour had taken place on account of insufficiency of funds and that it was not the case of the petitioner-accused that she did not receive the legal notice or that she had made the payment within 15 days and thus, necessary ingredients constituting the offence under Section 138 of the Act of 1881 were made out. Legal presumption in favour of the complainant was also raised under Section 139 of the Act of 1881 and reliance was placed upon various judgments of the Hon'ble Supreme Court on the said aspect. With respect to the argument raised by the learned counsel for the petitioner to the effect that the cheque although, was signed by the petitioner but the same had been issued from the joint account of both husband and wife, it had been observed by the Appellate Court that since the dishonoured cheque had been signed by the wife, thus, the wife i.e. present petitioner was required to be prosecuted and it was on the said account that the complaint against the husband was withdrawn.

The findings of the Courts below are legal and in accordance with law and no perversity or illegality has been pointed out against the said two judgments. No law has been cited to show that in case, the petitioner had signed the cheque and the same is from a joint account, of which, the petitioner was also a holder, then the petitioner would not be liable. 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 and further 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."

In the present case, it is the petitioner who is the drawer of the cheque and thus, the petitioner has been rightly convicted.

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

Since, the main case has been decided, application bearing CRM-18894-2022 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 judgment.

19.05.2022 **(VIKAS BAHL)**
Pawan **JUDGE**

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

Whether reportable:- **Yes/No**