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

CRR-1220-2022 (O&M)
Date of decision : 02.06.2022

Surender Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jitender Singh, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment dated 29.07.2019 passed by the Judicial Magistrate Ist Class, Karnal, 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 further to pay compensation equivalent to cheque amount for commission of offence punishable under Section 138 of the Act of 1881 within three months from today and in default of payment of compensation, the petitioner was directed to further undergo simple imprisonment for three months.

Challenge has also been made to the judgment dated

09.05.2022 passed by the Additional Sessions Judge, Karnal, vide which, the appeal preferred by the present petitioner has been dismissed.

Learned counsel for the petitioner has submitted that the petitioner was never in the fruit business and it was his brother-Jitender who was doing the said business. It is further submitted that blank signed cheque of the petitioner has been misused by the complainant and has wrongly instituted complaint under Section 138 of the Act of 1881.

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

The Lower Appellate Court had observed that as per the case and statement of the complainant-CW1, the petitioner and his brother namely Jitender used to do fruit business at bus stand Panipat and were known to the complainant and even used to visit the house of complainant and on account of the same, there were friendly relationship between them. It was further observed that the complainant had sold his tractor and car for an amount of Rs.5,50,000/- and the said fact was in the knowledge of the present petitioner and the petitioner required a sum of Rs.5,00,000/- for enhancing and running the fruit business and, therefore, the petitioner approached the complainant and borrowed an amount of Rs.5,00,000/- from the complainant in September, 2016 with an assurance to return the same within a period of six months but however, the petitioner did not return the said amount till 20.05.2017 and then the complainant approached the petitioner and demanded his money back and on 26.05.2017, the petitioner came to the house of complainant and in discharge of his legal liability, issued a cheque bearing No.059437 dated 26.05.2017 for an amount of

Rs.5,00,000/- in his favour drawn at Canara Bank, Unchagaon and when the said cheque was presented for encashment, the same was returned back dishonoured vide memo dated 18.09.2015 with the remarks “Funds Insufficient and cheque book destroyed” and thereafter, legal notice dated 08.06.2017 was served upon the petitioner to make payment of cheque amount within 15 days from receipt of the same but neither the petitioner gave any reply to the legal notice nor paid the amount and accordingly, complaint under Section 138 of the Act of 1881 was filed.

It has been noticed in para 5 of the judgment passed by the Appellate Court that complainant had stepped into the witness box as CW1 and had got the cheque duly exhibited as Ex.C2, return memo as Ex.C3, copy of legal notice as Ex.C4, postal receipt as Ex.C5, copy of deposit slip as Ex.C6, copy of account statements as Ex.C7 and Ex.C8. It was observed that the trial Court had convicted the present petitioner under Section 138 of the Act of 1881 after seeing that all the necessary ingredients under Section 138 of the Act of 1881 were met with. The Appellate Court had observed that the trial Court rightly invoked the presumption under Section 139 of the Act of 1881 and had correctly comes to the conclusion that the petitioner had issued the cheque Ex.C2 in discharge of his legal liability and all the ingredients under Sections 138 of the Act of 1881 were satisfied. With respect to the defence raised by the petitioner of blank signed cheque being misused, on suggestion put to CW1 as well as defence in statement recorded under Section 313 Cr.P.C. are not in consonance with evidence of DW2-Jitender Singh. It was observed that the suggestion given to CW1 was to the effect that by pressurizing DW2-Jitender Singh, the complainant had taken

cheque of the petitioner and then filled the amount of Rs.5,00,000/- on his own and misused the same. It was further noticed that on the other hand, when DW2 was examined, he had stated that he alongwith complainant came to the house of the present petitioner and the petitioner was not present in the house and in his absence, the complainant took away two blank signed cheques of his brother including the cheque in question from the almirah of his brother i.e. Surrender and it is the said cheque which has been misused. It was observed that version given by the DW2 to the effect that theft had been committed from almirah of the house was not mentioned in statement recorded under Section 313 Cr.P.C. nor suggested to CW1 in his cross-examination. DW2, in his cross-examination, had admitted that the fact that cheque of his brother i.e. petitioner had been stolen, had not been disclosed by him to the petitioner till that date, nor any complaint was made to the police with respect to the said theft. It was also observed that the story of the petitioner that he used to keep blank signed cheques in his almirah in his house or the petitioner had knowledge of the said fact that DW2 gained access to the almirah of the petitioner which was locked and stolen the cheques without any family members of the petitioner noticing the same, does not appear to be probable and the entire story seems to be concocted. The observations made by the Courts below are legal and in accordance with law. Nothing has been referred to by the petitioner to show that the said finding is perverse or illegal.

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. Even 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.”

In the abovesaid case, it has been held that the Revisional Court is not to interfere in the absence of jurisdictional error. In the present case, it is admitted case of the petitioner himself that the signatures on the cheque are his and his only defence to the effect that a blank signed cheque was kept by him has been held to be a concocted defence.

Keeping in view the abovesaid facts and circumstances, the present Criminal Revision being sans merit, is accordingly dismissed.

Since, the main case has been decided, application bearing CRM-21139-2022 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.

02.06.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No