

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRR-530-2011

Reserved on: 04.07.2022

Pronounced on: 13.07.2022

PARBATI

.....Petitioner

Versus

STATE OF HARYANA AND ANR.

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Argued by: Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J.

1. The learned Judicial Magistrate First Class, Karnal, through a verdict made on 22.05.2010, upon, complaint case No. 77/2010, wherein, became constituted an offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act'), hence proceeded to convict the accused qua a notice of accusation put to her under Section 138 of 'the Act'. Moreover, through a separate sentencing order drawn on 25.05.2010, he proceeded to sentence the convict to undergo rigorous imprisonment for a period of one year, and, also imposed upon her, a sentence of fine carried in a sum of Rs. 2500/- besides, directed her to pay compensation, carried in a sum of Rs.2,50,000/- rather to the complainant. In default of payment of fine, he sentenced the convict to undergo rigorous imprisonment for a further tenure of one month.

2. The aggrieved convict preferred thereagainst criminal appeal No. 58 of 2010, before the learned Additional Sessions Judge,

Karnal, whereons, through a verdict drawn on 14.02.2011, the learned appellate Judge proceeded to, affirm the verdict of conviction, and, consequent therewith sentence(s) (supra), as became initially recorded by the learned trial Magistrate concerned.

3. The convict becomes aggrieved from the above concurrently drawn verdicts of conviction, and, consequent therewith(s) sentence, besides also from the awarding(s) of compensation amount, to the complainant, and, has strived to cast a challenge thereto, through hers instituting the instant criminal revision petition.

4. The dishonoured negotiable instrument, is assigned Exhibit C-2, thereins, a sum of Rs. 2 lacs is carried. Exhibit C-2 is signed by the convict-revisionist herein. However, upon, presentation of Exhibit C-2 before the banker(s) concerned, it through memo comprised in Exhibit C-3, became declined to be honoured, rather on account of funds insufficient thereins, to satisfy the amount carried in Exhibit C-2. Therefore, the aggrieved complainant became constrained, to issue the statutory notice, as embodied in Exhibit C-4, to the convict-revisionist herein, and, the above was endeavoured to be served through Exhibit C-5, and, Exhibit C-6, which are respectively, the receipt(s) issued by the post office concerned, where the apposite deposit was made, and, the AD cover attached to the envelope enclosing the statutory notice to which Exhibit C-4 is assigned.

5. Though, the convict did not ever dispute the address mentioned in the postal receipts, and, or in the registered AD cover, but despite the postman attempting to deliver to the convict, the statutory notice, as, enclosed in the apposite envelope, rather, she appears to omit

to, despite repeated visits being made by the postman concerned, hence to take its delivery. Therefore, unless, at the time of the complainant's evidence, becoming adduced, or, at the time of adduction of defence evidence, if any, she had carved a defence(s) reflective qua, that at the relevant time of the postman visiting her abode, to cause service of the relevant statutory notice, as, enclosed in the apposite envelope, she was not available at the address concerned, and or, had pleaded, and, proven, that the address mentioned in the registered AD cover, was her incorrect address, thereupon, it would ensure the making of a firm conclusion, that she deliberately, and, intentionally, despite being available at her abode, at the relevant time, rather omitted to take delivery of the statutory notice.

6. Since the above evidence being remained un-adduced by the complainant, therefore, it has to be concluded that the address of the convict, as, mentioned in the registered AD cover, and or, on the envelope enclosing it, rather was her correct address, and, that when the postman concerned visited her abode on numerous occasions, to cause delivery thereof(s) upon her, she deliberately avoided to ensure its becoming delivered to her.

7. In consequence, she is concluded to be deemed to be served with the statutory notice, and, also for failure, if any, of personal deliveries of the statutory notice, upon her, rather the petition complaint hence cannot be construed to be mis-constituted.

8. As above stated, the dishonoured negotiable instrument, to which Exhibit C-2 is assigned, is indisputably signed by the convict-petitioner herein. The legal consequence of the convict, not

disputing the trite factum of Exhibit C-2, containing her signatures, is that, the complainant, becomes the holder in due course of Exhibit C-2, with a further sequel, that the amount carried therein, was for discharging, in whole, or in part, of a legally enforceable debt, or, other liability, as arose inter-se the complainant, and, the convict.

9. However, the presumption, as, carried in Section 139 of 'the Act', provisions whereof become extracted hereinafter, is a rebuttable presumption, and, the onus for adducing cogent rebuttable evidence thereto, hence, for eroding the efficacy of the statutory presumption, became cast upon the convict.

“139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

10. The convict in discharging, the onus of adducing evidence for rebutting the above statutory presumption, as invested in the complainant, who hence is the holder in due course of Exhibit C-2, she raised an exculpatory plea, that she had issued blank cheques to the complainant, for enabling him to make borrowings from a bank.

11. However, the above exculpatory plea(s), inasmuch as, of hers signing blank cheques, remains only a simpliciter/ bald contention besides is a surmisal contention, and, the reason for making the above conclusion, stems from the fact, that if all the scribings therein, with respect to the figures of the cheque amount, and or, of the corresponding thereto apposite words, if were not in her hands, thereupon yet she could firmly plead, and, could also ask for the apposite comparisons thereof, being made with her admitted/standard writings. However, apparently she never raised the above plea nor

strived to prove qua the scribings in words, and, in figures of the amounts narrated in Exhibit C-2, rather not being in her hands, or, that the cheques were issued blank. Therefore, the apposite simpliciter denials, do not appeal, to the judicial conscience of this Court, to hence become unflinchingly proven.

12. In sequel, the above plea, for hers therethrough, attempting to discharge the onus of rebutting the statutory presumption(s), as available, to the complainant, who rather is the holder in due course of Exhibit C-2, inasmuch as, the amounts carried therein, being towards discharge, in whole, or, in part of a legally enforceable, or other debt, as taken by the accused from the complainant, rather remains completely preserved, and or, remains intact.

13. In consequence, there is no merit in the petition, and, it is dismissed. The impugned verdicts, and, consequent therewith sentence(s) (supra), besides the awarding(s) of compensation, to the complainant, are affirmed and maintained. The Records be sent back to the learned trial court concerned.

14. The compensation amount, if not deposited, be realized from the petitioner, or from her estate, in the manner enshrined in Section 421/431 Cr.P.C.

15. Since the main case itself has been decided, hence, all the pending application(s), if any, also stand(s) disposed of.

13.07.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

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