IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

110 **CRMs-23781 & 23782 of 2022**
in/and CRR-1436-2022
Date of Decision: 13.07.2022

GURSEWAK SINGH

... Petitioner

Versus

PUNJAB AGRICULTURE DEVELOPMENT BANK LTD.

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: Mr. S.C. Arora, Advocate
for the applicant-petitioner.

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VINOD S. BHARDWAJ, J. (ORAL)

CRM-23781-2022

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 52 days in filing the accompanying revision petition.

Keeping in view the averments contained in the application, the same is allowed and as such, the delay of 52 days in filing the accompanying revision petition stands condoned.

MAIN REVISION

The present Revision Petition has been preferred against the judgment dated 03.03.2022 passed by the Additional Sessions Judge, Sri Muktsar Sahib in Crimimal Appeal RT No.85/30.08.2018/05.08.2021 as well as against the judgment of conviction and order of sentence dated 08.08.2018 passed in Criminal Complaint bearing No.218 of 2016 titled as "Punjab

Agriculture Development Bank Limited Vs. Gursewak Singh" instituted under Section 138 of the Negotiable Instruments Act, 1881 by the Chief Judicial Magistrate, Sri Muktsar Sahib. It is worthwhile to mention here that in the said complaint Jagjit Singh the brother of the petitioner-accused was not summoned by the Court concerned even though complaint had been instituted against two persons. Only the petitioner was summoned and convicted.

FACTS

Briefly the facts of the case are that the complaint in question had been instituted by the Punjab Agriculture Development Bank, Limited, Branch Officer Kotkapura Road, Sri Muktsar Sahib through its Assistant Branch Manager under Section 138 of the Negotiable Instruments Act, 1881 with the allegations that the petitioner-accused Gursewak Singh alongwith his brother Jagjit Singh had availed a loan from the complainant bank and had agreed to repay the same alongwith settled rate of interest by way of installments payable from time to time. However, the petitioner-accused did pay the loan and installments in time and committed default thereof. The cheque bearing No.231321 dated 30.09.2016 drawn on Punjab National Bank, Badhai for an amount of Rs.2,30,000/- against dishcarge of the said liability, duly signed by the petitioner-accused Gursewak Singh and his brother Jagjit Singh was presented for encashment. However, the same was dishonoured.

Thereafter, a statutory notice for repayment of the amount mentioned in the cheque was issued to the petitioner-accused, however, despite the legal notice having been served upon the petitioner-accused on

17.10.2016, the amount in question was not remitted. Hence, the complaint in question was instituted under Section 138 of the Negotiable Instruments Act, 1881.

The petitioner-accused Gursewak Singh was duly summoned to face the proceedings and notice of accusation was served upon him, to which he pleaded not guilty and claimed trial.

After considering evidence led on behalf of the respective parties, the Chief Judicial Magistrate, Sri Muktsar Sahib returned a finding of conviction against the petitioner-accused vide judgment dated 08.08.2018 and sentenced the petitioner-accused to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.3,000/- out of which Rs.2,000/- was to be given as compensation to the complainant-bank.

The aforesaid judgment of conviction as well as order of sentence were the subject matter of challenge before the Court of Additional Sessions Judge, Sri Muktsar Sahib in an appeal bearing No.RT-85 of 2018 and vide judgment dated 03.03.2022, the appeal was dismissed and the judgment dated 08.08.2018 passed by the Chief Judicial Magistrate, Sri Muktsar Sahib was upheld.

ARGUMENTS

Learned counsel appearing on behalf of the petitioner-accused has raised an argument that even though the loan in question had been advanced to the petitioner-accused as well as his brother Jagjit Singh and they both were the signatories to the cheque in question, however, only the petitioner-accused has been prosecuted and his brother Jagjit Singh has not been prosecuted. Learned counsel further contends that the case of the respondent-complainant Bank is based solely on the account statement and has further argued that the cheque in question was a security cheque. It is also contended that the petitioner is ready and willing to settle the account with the respondent-complainant Bank.

I have heard the learned counsel for the petitioner-accused and have also gone through the documents appended with the paperbook.

ANALYSIS

A perusal of the judgment passed by the Chief Judicial Magistrate, Sri Muktsar Sahib shows that Jagjit Singh son of Harbans Singh was also arrayed as accused in the complaint in question, however, he was not summoned by the Court and only the petitioner-accused Gursewak Singh had been summoned to face the trial/proceedings for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

As far as the first argument of the counsel for the petitioner to the effect that the brother of the petitioner-accused, who was also a signatory to the impugned cheque, having not been summoned by the trial Court is concerned, it is well settled position in law that even one of the signatories to the cheque can be summoned and tried for the commission of the alleged offence. It is not a mandatory provision of law that all the signatories to the cheque must be prosecuted pursuant to a dishonour of cheque and in absence of any other signatory from prosecuted, the other accused, who is also a signatory to the cheque and who undisputedly owed the liability against which the cheque in question had been issued, ought to be discharged. Learned counsel could not refer to any provision in law or to any precedent judgment to substantiate his argument. The argument, therefore, is devoid of any merits and is hereby rejected. Even otherwise, it is not the case that the proceedings had not been instituted by the complainant. However, upon consideration of pre-summoning evidence, the Court came to a conclusion that there was no sufficient evidence to prosecute the second person. Hence, the role of the petitioner was clearly distinguished by the Court at the stage of summoning itself.

Insofar as the second argument of the learned counsel for the petitioner-accused that the case of the respondent-complainant Bank has been accepted solely on the basis of the statement of account is concerned, it is evident that the liability in question by availing of the loan facility has not been disputed. The petitioner-accused has also not led any evidence to dispel the alleged statement of account establishing that the amount for which the cheque in question was presented was not correct or due as per the statement of account so produced by the respondent-complainant Bank. In the absence of any evidence to dispute the existence of the pre-existing liability, the cheque in question that was handed over by the petitioner-accused purportedly as a security cheque could have been duly utilized by the bank to secure the repayment of the loan amount so advanced by the respondent-complainant.

Proceeding under the Negotiable Instruments Act, 1881 cannot be held void merely because a security cheque duly issued by the accused is presented for repayment of pre-existing liability and a legally enforceable debt. The relevant extract of the judgment of the Hon'ble Supreme Court passed in the matter of ***Sripati Singh (since deceased) through his son***

Gaurav Singh vs. State of Jharkhand and another reported as 2021 SCC Online SC 1002 is reproduced hereinbelow:-

> *13.In order to consider this aspect of the matter we have at the outset taken note of the four loan agreements dated 13.08.2014 which is the subject matter herein. Under each of the agreements, the promise made by respondent No. 2 is to pay the appellant a sum of Rs. 50 lakhs. Thus, the total of which would amount to Rs. 2 crores as contended by the appellant. Towards the promise to pay, the repayment agreed by the respondent No. 2 is to clear the total amount within June/July 2015. Para 5 of the loan agreement indicates that six cheques have been issued as security. The claim of the appellant has been negated by the High Court only due to the fact that the agreement indicates that the cheques have been given by way of security and the complainant has also stated this fact in the complaint. Though the High Court has taken note of the decision in the case of Sudhir Kumar Bhalla (supra) to hold that the cheque issued as security cannot constitute an offence, the same in our opinion does not come to the aid of the respondent No. 2. There is no categorical declaration by this Court in the said case that the cheque issued as security cannot be presented for realisation under all circumstances. The facts in the said case relate to the cheques being issued and there being alterations made in the cheques towards which there was also a counter complaint filed by the drawer of the cheque. Hence, the said decision cannot be a precedent to answer the position in this case and the High Court was not justified in placing reliance on the same.*
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> *15. The said conclusion was reached by this Court*

while distinguishing the decision of this Court in the case of Indus Airways Pvt. Ltd. v. Magnum Aviation Pvt. Ltd. (2014) 12 SCC 539 which was a case wherein the issue was of dishonour of postdated cheque issued by way of advance payment against a purchase order that had arisen for consideration. In that circumstance, it was held that the same cannot be considered as a cheque issued towards discharge of legally enforceable debt.

16. Further, this Court in the case of Womb Laboratories Pvt. Ltd. (supra) has held as follows: — "5. In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved-that such security could not be treated as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from such cheques. 6. Suffice it to observe, the impugned judgment of the High Court cannot stand the test of judicial scrutiny. The same is, therefore, set aside."

17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make *certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other.*

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there *cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.*

20. In the background of the factual and legal position taken note supra, in the instant facts, the appellant cannot be non-suited for proceeding with the complaint filed under Section 138 of N.I. Act merely due to the fact that the cheques presented and dishonoured are shown to have been issued as security, as indicated in the loan agreement. In our opinion, such contention would arise only in a circumstance where the debt has not become recoverable and the cheque issued as security has not matured to be presented for recovery of the amount, if the due date agreed for payment of debt has not arrived.

Furthermore, the Hon'ble Supreme Court in the matter of ***Sampelly Satyanarayana Rao Vs Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458.***

9. We have given due consideration to the submission *advanced on behalf of the appellant as well as the observations of this Court in Indus Airways with reference to the explanation to Section 138 of the Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*

10. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced and the instalment falls due. It is undisputed that the loan was duly disbursed on 28-2-2022 which was prior to the date of the cheques. Once the loan was disbursed and instalments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

11. The judgment in Indus Airways is clearly distinguishable. As already noted, it was held therein that liability arising out of claim for breach of contract under Section 138, which arises on account of dishonour of cheque issued was not by itself at par with criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of cheque issued for discharge of later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque there was a debt/liability in praesenti in terms of *the loan agreement, as against Indus Airways where the purchase order had been cancelled and cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as advance for the purchase order which was cancelled. Keeping in mind this fine but real distinction, the said judgment cannot be applied to a case of present nature where the cheque was for repayment of loan instalment which had fallen due though such deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways, one cannot lose sight of the difference between a transaction of purchase order which is cancelled and that of a loan transaction where loan has actually been advanced and its repayment is due on the date of the cheque. .*

12. The crucial question to determine applicability of Section 138 of the Act is whether the cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from discussion of the said cases in the judgment of this Court.

Hence, the position in law is well settled that an accused can be prosecuted for dishonour of a cheque that had been issued as a security cheque especially when the liability in question is duly established by the complainant.

Insofar as the third argument of the learned counsel for the petitioner-accused that he is ready and will to settle the account with the complainant-respondent Bank is concerned, the same is a recourse which is always open to the petitioner-accused and as soon as the settlement is arrived at between the parties, the petitioner-accused would be at liberty to file appropriate petition seeking relief under Section 147 of the Negotiable Instruments Act, 1881. However, the said plea does not stand corroborated by overt acts as no such offer for settlement has ever been made by the petitioner-accused before any of the Courts below. Even during the course of hearing and during the pendency of revision, no payment or the time schedule for repayment of the debt was offered. It thus seems that this argument has been raised solely for delaying the adjudication of the case as it lacks support in conduct of the petitioner-accused or showing his bonafide and intent to repay the amount.

Further the perusal of the judgments of the Courts below that have been impugned by virtue of the present Revision Petition clearly shows that the submissions advanced by the learned counsel for the petitioner-accused have already been well considered by the Courts below. The relevant part of the judgment passed by the Chief Judicial Magistrate, Sri Muktsar Sahib is extracted herein below:

> *12. The plaintiff bank has claimed that the accused and his brother Jagjit Singh took KCC loan 5/137 from the complainant bank and they agreed to pay the said loan amount along with agreed rate of interest by way of installments from time to time. It is claimed that accused became defaulter in the repayment of the installments to the complainant. As per the complainant bank the accused issued a cheque no.231321 dated 30.09.2016 exhibit C1 drawn on Punjab National Bank,*

Badhai for an amount of Rs.2,30,000/- duly signed by him as he was having the account no.3441000160033959 in the said bank. It is claimed that complainant bank is having its account in the Muktsar Central Co-Operative Bank Ltd., Branch Sri Muktsar Sahib and therefore complainant bank presented the said cheque for its encashment in this bank within the statutory period of the presentation of cheque and this cheque was forwarded to bank of accused though clearing house, but the cheque in question was returned back to the banker of complainant being dishonoured vide dishonour memo exhibit C2 dated 03.10.2016 with the remarks 'Account Dormat' and this cheque was further returned to the complainant bank by its banker as unpaid. The complainant bank has claimed that a legal notice exhibit C3 was also served upon them by the complainant bank on 17.10.2016, but the accused not paid any amount to the complainant bank. In order to substantiate its claims the complainant bank has examined CW1 Shaminderpal Singh, Assistant Branch Manager, through his duly swom affidavit Ex.CW1/A toed on the lines of the complaint filed by the complainant. PW1 has also proved original cheque Ex.C1, cheque return memo Ex.C2, copy of notice Ex.C3, postal receipts Ex.C4 and Ex.C5, attested copy of loan application Ex.C6, attested copy of loan ledger of accused Ex.C7, attested copy of loan ledger of interest amount of accused Ex.C8, attested copy of resolution dated 15.04.2015 Ex.C9, original authority letter in favour of the then Branch Manager Balwinder Singh Ex.C10 and original authority letter in his favour Ex.C11. He also identified the signatures of Balwinder

Singh, the then Branch Manager at point Mark A over the notice Ex.C3. As in the present case the accused has not disputed his signatures on the cheque Ex C1 thus the presumption under Section 139 Negotiable Instruments Act has arisen in favour of the complainant and it can be legally inferred that the cheque drawn for consideration on the date which the cheque bears. .... Thus, it has to be seen as to whether the accused has been able to rebut the presumption which shifted on his shoulders. In instant case the accused has taken the specific defence that he did not take any loan from the complainant Bank and he has been implicated in a false case. However, no evidence in this regard has been brought forward by the accused that no loan was ever taken by him from the complainant bank. The witness examined by the complainant has been cross-examined at length by the for the accused but he has not been able to bring out anything material from his testimony that could show that the incorrectly only in order to support the complainant bank. ....

13. XXXXXXX

14. In the case in hand the disbursement of loan also proved by the complainant from the bank records i.e. loan application Ex C6 and the account statement Ex C7. It is clear that the accused obtained the loan from the complainant bank as claimed by the complainant bank. However there is nothing on the file to show that accused has repaid the loan. Accused has not denied his signatures on the cheque and thus in view of the proof of existence of legally recoverable debt, the presumption under Section 139 of the Act also come into play that cheque was in fact issued in order to discharge such debt and it was for the accused to prove *that the cheque was not issued against any legally recoverable debt. However, accused has totally failed to rebut such presumption. Therefore, this Court is of the opinion that accused was in fact under legal liability to repay the loan, and it is proved that cheque Ex.C1 was issued in favour of the complainant bank towards partial repayment of loan amount which was dishonoured on account of insufficient funds. It is clear accused has not been able to rebut the presumption which shifted on his shoulders.*

15. From the evidence which has been led by the complainant it has been duly established on record the accused issued the cheque Ex. C1 in order to discharge his legal liability and the same when presented in the bank by the complainant was returned unpaid on account of 'funds insufficient' vide memo Ex.C2. The complainant has duly established that statutory legal notice Ex C3 was issued by the complainant bank to the accused however the accused did not make the payment of the due amount. Thereafter, the complainant filed the complaint within the stipulated period. Till date the accused has not made the payment of the cheque amount. Therefore, the accused has committed the offence. punishable under Section 138 of the Negotiable Instruments Act and as such the point of determination is answered in affirmative in favour of the complainant.

Further, the relevant extract of the judgment passed by the Additional Sessions Judge, Sri Muktsar Sahib is reproduced herein below:

"12. In defence evidence, the appellant stated that he never took any loan from the complainant bank, but he failed to prove by examining any defence witnesses, except this plea, accused-appellant not proved his defence as pleaded in the statement of the accused under Section

> *313 of the Cr.P.C. As he specifically denied that he never issued any cheque in question nor he took loan from complainant bank, however, he not proved this signature by examining any defence witnesses. So, as per Negotiable Instruments Act, presumption is with the complainant under Section 138 of the Negotiable Instruments Act and under Section 139 of the Negotiable Instruments Act and the learned lower Court rightly convicted the accused after appreciating the evidence of the complainant/respondent."*

From the perusal of the above, it is very much clear that all the contentions of the petitioner have been duly considered. The learned counsel for the petitioner-accused has failed to point out any illegality, infirmity, impropriety or perversity in the judgments passed by the Court below and has also failed to indicate any misappreciation of evidence by the Courts below or to establish that the conclusion so drawn by the Courts below was not sustainable on the strength of evidence adduced by the respective parties.

CONCLUSION

Hence, finding no merit in the present Revision Petition, the same is dismissed and the judgment dated 08.08.2018 passed by the Chief Judicial Magistrate, Sri Muktsar Sahib and the judgment dated 03.03.2022 passed by the Additional Sessions Judge, Sri Muktsar Sahib are hereby affirmed.

CRM-23782 of 2022

This is an application under Section 389 of the Cr.P.C. for granting the benefit of suspension of sentence to the petition-accused during the pendency of the present Revision Petition.

Since the main Revision Petition has itself been dismissed today, therefore, the present application becomes infructuous.

Dismissed for having been rendered as infructuous.

(VINOD S. BHARDWAJ)
JUDGE

13.07.2022
rajender

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