

112
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1521-2022 (O&M)
Date of Decision: 08.09.2022

Raju Singh

....Petitioner(s)

Versus

Punjab Agriculture Development Bank (PADB)
Branch, Mansa and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jasvir Singh Dhaliwal, Advocate for the petitioner.

JASGURPREET SINGH PURI, J.

The present is a revision petition filed seeking setting aside of judgment and order of sentence dated 19.12.2019 passed by the learned Judicial Magistrate Ist Class, Mansa whereby the petitioner has been convicted under the provisions of Section 138 of the Negotiable Instruments Act, 1881 and to undergo rigorous imprisonment for a period of six months and to pay compensation to the tune of cheque amount of Rs. 2,25,000/- and also the order passed by the learned Appellate Court/ Sessions Judge, Mansa by which the appeal filed by the petitioner was dismissed on 12.07.2022.

It has been submitted by the learned counsel for the petitioner that both the impugned judgments are liable to be set aside on the ground that both the Courts below have erred in law on the facts of the case and have erroneously convicted the petitioner. He further submitted that the

petitioner was not liable to pay any amount to the respondent-bank and the cheque which was issued by the petitioner was only a blank cheque for security purposes and therefore, there was no obligation for the petitioner to pay any amount to the respondent-bank.

I have heard the learned counsel for the petitioner and have also perused the record.

In the present case as per the complainant the petitioner had obtained a total loan of Rs. 5,00,000/- from the bank-respondent for dairy business and in order to discharge his legal liability, he had issued a cheque bearing No.441643 dated 29.11.2017, amounting to Rs. 1, 90,000/- from his account No. CLSB140074 in favour of the respondent-bank drawn on Corporation Bank, Mansa. The said cheque was presented for collection on 01.12.2017 at PNB Branch, Mansa but the same was dishonoured and returned with the remarks 'Funds Insufficient'. Therefore, a legal notice was served upon the petitioner dated 21.12.2017 but the petitioner did not give any reply to the legal notice nor did he make any payment. Thereafter, the present complaint was filed under Section 138 of the Negotiable Instruments Act, 1881.

The learned Judicial Magistrate Ist Class, Mansa while considering the complaint filed by the respondent-bank observed that the Accountant of the bank who was authorized to file the complaint stepped into witness box as CW1 and tendered into his evidence an affidavit duly sworn by him as part of his examination-in-chief. He proved the cheque in question as Ex. C1, memo as Ex. C2, legal notice as Ex. C3, postal receipt as Ex. C4, copy of application dated 12.01.2018 as Ex. C5, copy of resolution as Ex. C6, copies of ledgers as Ex. C7 and Ex. C8 respectively. Thereafter,

Assistant Manager of the bank was also examined who brought the record and also proved a copy of the cheque and various other documents were also proved by him. Thereafter, the statement of petitioner under Section 313 Cr.P.C was also recorded putting him all the incriminating evidence and he made denial and pleaded innocence and stated that he never issued any cheque dated 29.11.2017 in favour of the bank. Learned Judicial Magistrate Ist Class observed that in the statement under Section 313 Cr.P.C, the petitioner took the plea that he obtained loan from complainant-bank and therefore, it was clear that the cheque in question was issued in discharge of legally enforceable debt and the liability to pay the same amount was on the petitioner. The signatures on the cheque were not denied by the petitioner and therefore, presumption would arise that the cheque pertains to legally enforceable debt but same could not be rebutted by the petitioner since the onus has shifted upon the petitioner to rebut the presumption. However, the petitioner has failed to lead any defence evidence and to rebut the above presumption.

Thereafter, on appeal the learned Appellate Court also considered the grounds taken by the petitioner and also concluded that the learned trial Court has rightly held that the petitioner was guilty of offence under Section 138 of the Negotiable Instruments Act, 1881 since the petitioner has failed to dislodge the presumption.

A perusal of the aforesaid impugned judgments as well as the record of the case would show that the signatures on the cheque were not denied by the petitioner. The petitioner has not led any defence evidence. The argument raised by the learned counsel for the petitioner that he has issued a cheque for the security purpose would not be of any benefit to the

petitioner since the same does not hold a good ground for acquitting the petitioner since in case of dishonour of a security cheque also a complaint under Section 138 of the Negotiable Instruments Act, 1881 will still lie. A statutory presumption has been raised against the petitioner who was the signatory of the cheque and he did not lead any defence evidence. The onus was shifted upon the petitioner to rebut the statutory presumption but he was not able to rebut the same.

In view of the aforesaid facts and circumstances, this Court does not find any illegality or perversity in the impugned judgments passed by the learned trial Court as well as learned lower Appellate Court and this Court does not find any ground to interfere in Revision jurisdiction.

Consequently, the present Revision Petition is hereby dismissed.

08.09.2022

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

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