

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

CRR-1890-2022 (O&M)

Date of Decision: 13.09.2022

Rajmal

.....Petitioner

Vs.

Ashok Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashish Naik, Advocate,
for the petitioner.

VIKAS BAHL, J. (Oral)

CRM-34292-2022

This is an application filed for grant of leave under Rule 3-A (1) of Chapter VI, Part B, Volume V of the Punjab and Haryana High Court Rules and Orders to file the present petition.

In view of the averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present petition.

CRR No. 1890-2022

1. Challenge in the revision petition is to the order dated 13.07.2022 passed by the learned Additional & Sessions Judge, Hisar, vide which the Criminal Appeal bearing No. 91 of 2021 filed by the petitioner-accused against the judgment of conviction and the order of sentence dated 15.07.2021, passed by learned Judicial Magistrate Ist Class, Hisar, has been dismissed and the petitioner has been held guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Learned counsel for the petitioner has submitted that in the present case, the complainant had promised to manage a loan of Rs. 10,00,000/- from the bank and to complete banking formalities, the complainant had taken 05 blank cheques along with copy of Aadhar card and Pan card from the petitioner but the complainant did not procure any loan for the petitioner and misused the said blank cheques against the petitioner. It is further submitted that even the affidavit of the petitioner Ex. P-5, relied upon by the complainant was a blank document signed by the petitioner and the same had been misused.

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

4. The complainant/respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, on the allegation that the petitioner had borrowed an amount of Rs. 3,00,000/- from him in the month of January 2018 with a promise to repay the said amount in March 2018, along with interest @ 12% per annum. It is further alleged that when the complainant had paid Rs. 3,00,000/- to the petitioner on 08.01.2018, a writing/affidavit (Ex. P-5) was executed by the petitioner in favour of the complainant with respect to the same. It was further the case of respondent no. 2 that when he demanded his money back, the petitioner, in discharge of his outstanding and legally enforceable liability, had issued a cheque dated 17.03.2018 amounting to Rs. 3,00,000/- from his bank account with Oriental Bank of Commerce, in favour of the complainant with respect to the principal amount and had even promised that he would pay the interest within a short period. On the presentation of the said cheque for

encashment, the same was returned with the remarks “funds insufficient” vide memo dated 19.03.2018. The complainant thereafter served a legal notice upon the accused on 31.03.2018 and called upon him to pay the cheque within 15 days of the receipt of the legal notice. The petitioner had neither sent any reply, nor made payment of the said cheque and thereafter the complaint under Section 138 of the Negotiable Instruments Act, 1881, was filed. The complainant examined himself as PW-1 and tendered his affidavit as Ex. PW-1/A and also produced on record the following documents:-

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| 1. Ex. P-1 | Original cheque dated 17.03.2018 |
| 2. Ex.P-2 | Cheque Return Memo |
| 3. Ex. P-3 | Legal Notice |
| 4. Ex. P-4 | Postal Receipt |
| 5. Ex. P-5 | Affidavit of accused |
| 6. Ex. P-6 | Photocopy of Aadhar card of accused |
| 7. Ex. P-7 | Copy of death certificate of Smt. Pushpa |

5. Both the courts below, after considering the evidence and the documents on record, convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced the petitioner to simple imprisonment for a period of 06 months for the offence punishable under Section 138 of the Act of 1881 and directed the petitioner to pay compensation to the tune of Rs. 3,00,000/- i.e. the amount of the cheque under Section 143 (1) (proviso) of the Negotiable Instruments Act, 1881, read with Section 357 (1) (3) of the Cr.P.C.

6. The Appellate Court observed in paragraph 15 of the order dated 13.07.2022, that the signatures of the petitioner on the cheque in question, i.e. Ex. P-1 were not disputed by the petitioner. The plea taken by the petitioner to the effect that the complainant had promised to manage the loan of Rs. 10,00,000/- from the bank was neither taken in the statement recorded under Section 313 of the Cr.P.C., nor any evidence was adduced to prove that the complainant was engaged in the business of managing loan from the bank or financial institutions. It was observed therein that it was surprising that 05 blank signed cheques had been given by the petitioner to the complainant and even instructions of “stop payment” had not been issued till the filing of the complaint in order to avoid misuse of the said cheques and the same was done only after the filing of the complaint. It was further observed in paragraph 16 that the signatures of the petitioner on the affidavit Ex. P-5 were also not disputed by the petitioner, nor any explanation had been given as to why the petitioner had signed the said affidavit and further no writing expert was examined to show that the matter on the said affidavit had been written subsequently. It was observed that a perusal of the affidavit Ex. P-5 shows that the said document was typed on computer and the signature of the petitioner was appended at the appropriate places and thus, the plea that the petitioner had signed a blank affidavit was thus, rejected. The presumption under Section 139 was raised and it was observed that the same had not been rebutted by the petitioner. With respect to the financial capability of the complainant, apart from the fact that there was presumption under Section 139, it was found from cross-examination of

PW-1 (complainant) that he was working as an electrician and thus, it could not be said that he did not have the sources to advance an amount of Rs. 3,00,000/- to the petitioner. Reliance was placed upon the judgment of the Hon'ble Supreme Court in “Rohitbhai Jivanlal Patel vs. State of Gujarat” reported as (2019) 18 SCC 106 and “M/s Kalamani Tex and another vs. P. Balasubramanian reported as (2021) 2 SCALE 434 with respect to the aspect that once the signatures on the cheques have been admitted, the presumption would rise in favour of the drawee of the cheque and the cheque would be presumed to have been issued in discharge of a legally enforceable debt and it was not for the courts to call upon the complainant to explain the circumstances in which the accused was liable to pay the amount in question as the onus to rebut the presumption under Section 139 is on the accused.

7. Moreover, 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.”

Further, as per as per the judgment of co-ordinate Bench of this Court in **Shalini Enterprises Vs. India Bulls Financial Service** reported as **2013 (2) CCC, 835**, the petitioner cannot escape liability on the ground that the cheque in question was a security cheque. The relevant portion of said judgment is reproduced hereinbelow:-

“His additional plea is that the cheque which was presented for encashment was actually a security

cheque and hence no liability would arise by dishonour of such a cheque.

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Additional plea of the petitioner that dishonour of a security cheque can not fasten the liability on the drawer under the Negotiable Instruments Act is also not acceptable. There can be no doubt regarding the fact that the security cheque is an integral part of the commercial process entered into between the Petitioner and Respondent/ Complainant. The security cheque is not only a deterrent for the drawer against dishonoring his financial commitment but can also be legally and validly utilized towards the discharging of the liability of the Drawer. It cannot by any stretch be argued that a security cheque is not handed over or issued in pursuance of any undischarged liability. To hold so would defeat the whole purpose of a security cheque. In the considered opinion of the Court, a security cheque is an acknowledgment of liability on the part of the drawer that the cheque holder may use the security cheque as an alternate mode of discharging his/its liability. Thus the argument of the learned counsel for the petitioner that on dishonouring of a security cheque no offence punishable under section 138 of the Negotiable Instruments Act is made out.”

A perusal of the above judgment would show that it has been observed that even if a cheque is a security cheque, the same is an integral part of the commercial process and the same acts as a deterrent for the drawer against dishonouring his financial commitment and can also be used towards discharging the liability of the drawer. It is further held that to state otherwise, would defeat the whole purpose of a security cheque. No judgment has been cited by the learned counsel for the petitioner to show any contrary view.

8. In the present case, the signatures of the petitioner on the affidavit Ex. P-5, in which it had been mentioned that the present petitioner had taken a loan from the complainant, have not been disputed. No handwriting expert has been examined and no evidence has been led to show that the said document was forged or fabricated. The finding of the appellate court in paragraph 16 of the order dated 13.07.2022 to the effect that the said document Ex. P-5 had been typed on the computer and the signatures of the petitioner had appeared at the appropriate places, has not been disputed before this court. The signature on the cheque Ex. P-1 has also not been disputed. The presumption under Section 139 has been rightly raised against the petitioner by both the courts below. The plea sought to be taken by the petitioner to the effect that the complainant had promised to manage the loan of Rs. 10,00,000/- from the bank for the petitioner and it was for the said purpose that five blank cheques had been given to the complainant by the petitioner, is stated to have not been taken in the statement under Section 313 of the Cr.P.C., nor there is any evidence to show that the complainant was engaged in the business of managing loans from the bank or financial institutions, as has been observed in paragraph 15 of the judgment of the appellate court and the said findings have also not been shown to be perverse before this Court. Apart from the presumption under Section 139 of the Negotiable Instruments Act, 1881, the financial capacity of the complainant is also proven from the fact that he is working as a electrician. No defence, much less any evidence has been adduced to rebut the presumption raised in favour of the cheque holder. No arguments have been raised by the learned counsel for the

petitioner to show that the provisions of the Negotiable Instruments Act, 1881, had not been complied with before filing the complaint under Section 138 inasmuch as, it is the case of the complainant that the cheque was dishonoured on the ground of “funds insufficient” and a legal notice was thereafter issued to the petitioner and it was subsequent to the same that the complaint under Section 138 was filed, in accordance with law.

9. Keeping in view the facts and circumstances, moreover, the law laid down in the aforesaid judgments, there is no merit in the present revision petition and the same is consequently, dismissed.

10. Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

September 13, 2022	(VIKAS BAHL)
nitin	JUDGE
Whether speaking/reasoned	Yes
Whether Reportable	No