

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-2103-2022(O&M)
Date of decision : 10.10.2022

Surinder Rai

... Petitioner

Versus

Mohd. Hasim

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Manoj Chahal, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

CRM-37931-2022

This is an application under Section 5 of the Limitation Act for condonation of delay of 51 days in filing the accompanying revision petition.

For the reasons stated in the application, the application is allowed and delay of 51 days in filing the accompanying revision petition is condoned.

CRR-2103-2022

Challenge in the present revision petition is to the judgment dated 25.01.2018 vide which the Judicial Magistrate Ist Class, Chandigarh, had convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (in short "N.I.A.") and had sentenced the petitioner as under:-

"The interest of justice would be met if the convict Surinder Rai is sentenced to undergo Rigorous Imprisonment for a period of One Year for commission of offence punishable under S.138 of

*Negotiable Instruments Act, 1881. Further ends of justice would be best served, if the convict is directed to pay compensation. The Hon'ble Supreme Court of India in **Pankaj Bhai Patel Vs. State of Gujarat 2001(1) CCJ 119 has held that** -the Magistrate has power to allow any sum as compensation under S.357(3) Cr.P.C. **The convict is directed to pay compensation under section 357(3) Cr.P.C. to complainant of amount equivalent to the cheque amount i.e. 2,81,000/- within period of one month** of expiry of period prescribed for appeal, or its disposal, if any. It is ordered accordingly. The period of imprisonment/detention already undergone by the convict, if any, during the trial of this case shall be set-off against the substantive sentence under S.428 of Cr.P.C. File be consigned to record room, Chandigarh.*

Pronounced in open court on this, 25th Day of January, 2018.”

Challenge is also to the order dated 11.05.2022 vide which the appeal filed by the present petitioner has been dismissed by the Additional Sessions Judge, Chandigarh.

2. Learned counsel for the petitioner has primarily raised two arguments to challenge the said judgments. The first argument raised is that the brother of the petitioner had entered into a partnership with the complainant and at the time of entering into the said partnership, the present petitioner had given a blank signed cheque for the purpose of security and the said cheque was not issued for the discharge of any legally enforceable debt. The second argument, which has been raised, is that although, as per the case of the complainant, the loan amount which was given by the complainant was to the tune of Rs.3 lacs, whereas the cheque in question was issued for an amount of Rs.2,81,000/- and the said fact would show that the case set up by the complainant is false inasmuch as, no one would issue a cheque for an amount of Rs.2,81,000/- in case the loan given was for an amount of Rs.3 lacs.

perused the paper book.

4. Brief facts of the present case are that the respondent had filed a complaint under Section 138 N.I.A. against the present petitioner on the averments that the petitioner and the complainant had a family relationship and in the first week of July 2013, the petitioner had approached the complainant and had requested the complainant for a friendly loan of Rs.3 lacs and on his request, the complainant had paid a sum of Rs.3 lacs to the petitioner as a friendly loan in the third week of July, 2013 and the petitioner had agreed to return the same within a short period of two months and after the said period was over, the petitioner had failed to return the said amount and after much persuasion by the complainant, the petitioner had issued cheque bearing no.938724 dated 20.10.2013 amounting to Rs.2,81,000/- drawn on ICICI Bank, Sector 9 D, Chandigarh in favour of the complainant and assured that the same would be encashed on its presentation. The cheque was accordingly presented for encashment but the same was dishonoured with the remarks “funds insufficient” vide memo dated 23.12.2013. The complainant had then served legal notice dated 14.01.2014 through registered post dated 16.01.2014 for demanding the payment of cheque amount and the petitioner failed to make the said payment and accordingly, the complaint unde Section 138 N.I. A. was filed. The complainant appeared as CW-1 in support of his complaint and also duly produced on record the cheque in question Ex.C1, bank memo with respect to the dishonoured cheque as Ex.C2, legal notice Ex.C3, receipts Ex.C4 and Ex.C5 and envelopes Ex.C6 and C7. The trial Court after considering the entire evidence and documents on record, had formulated the following two points for determination:-

- “1. Whether accused has issued cheque in question in discharge of his legal outstanding liability towards complainant?*
- 2. Whether accused is guilty for commission of offence punishable under Section 138 of N.I. Act?”*

After considering the entire material as well as the provisions of Section 139 and 118(a) N.I.A., the trial Court answered both the points in favour of the complainant and accordingly, convicted the petitioner under Section 138 N.I.A. and sentenced him as has been detailed hereinabove.

5. The appellate Court in appeal re-appreciated the entire evidence and dismissed the appeal filed by the petitioner. The evidence with respect to the financial capacity of the complainant and the evidence of the complainant (CW-1) to the effect that he had a business of Mango Garden in Sector 28-29, Chandigarh for the last 10-12 years and the fact that he used to earn Rs.1 lac annually as profit, was taken into consideration. It was also observed that the petitioner had not led any defence evidence in support of his pleas and thus, the evidence of the complainant on the said aspect as well as the other aspects remained unrebutted. With respect to the argument raised by the petitioner on the aspect of the cheque being a blank cheque signed by the petitioner, given at the time of the execution of partnership deed entered between the complainant and the brother of the petitioner, it was observed that the complainant had appeared in the witness box as CW-1 and had deposed on the lines of his complaint and even successfully stood the test of cross-examination. It was observed that said CW-1 had categorically stated that the petitioner had given the cheque in question in the month of October, 2013 and the same was duly filled up by the petitioner and no suggestion had been given to said CW-1 that at the

complainant from the accused. It was further observed that by pleading that the cheque was a blank signed cheque, the petitioner had admitted his signatures on the disputed cheque and no defence evidence had been led in order to rebut the presumption which arises in favour of the holder of the cheque. It was also observed that the presumption under Section 139 N.I.A. operates against the petitioner, which could have been rebutted only by the evidence produced by the petitioner but the petitioner had failed to rebut the same as no evidence had been produced / led in defence. The appellate Court had also taken into consideration the fact that during the course of proceedings under Section 138 N.I.A., when the petitioner was appearing before the Court, he had compromised the matter with the complainant and had agreed to pay an amount of Rs.3.6 lacs in 12 installments of Rs.30,000/- each but after paying the first installment of Rs.30,000/- on 21.10.2019, he had failed to appear before the Court and thus, by entering into the said compromise, he had admitted his liability.

6. No document or evidence has been highlighted before this Court to even remotely show that any of the observations recorded by the Courts below were perverse or illegal or there was any misreading of any evidence/documents .

7. 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.”

8. 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.

9. After considering the entire material, this Court is of the view that the present petition deserves to be dismissed on the following grounds:-

i) Both the courts below have taken into consideration the entire evidence and documents on record and have convicted the petitioner under Section 138 N.I.A. and sentenced him as has been stated hereinabove. It has not been shown to this Court that any finding / observation of both the Courts below is perverse or illegal or any evidence or document has been misread or misconstrued.

ii) Even as per the arguments raised by the petitioner before this Court as well as before the appellate Court, the cheque in question was admittedly signed by the petitioner. In view of the law laid down by the Hon'ble Supreme Court of India in ***Bir Singh's*** case (supra) as well as by the coordinate Bench of this Court in ***Shalini Enterprises's*** case (supra) and also the

provision of Section 139 N.I.A., in such a situation, the presumption of the cheque having been issued in discharge of a legally enforceable debt, arises in favour of the complainant and it is for the petitioner -accused to rebut the said presumption which has not even been remotely done in the present case inasmuch as no defence evidence has been led by the petitioner-accused.

iii) In the present case, it is not even prima-facie proved that the present cheque was issued as a security cheque. The appellate Court had taken into consideration the evidence of complainant as CW-1, who had specifically stated in his evidence that the petitioner had given a cheque to him in the month of October 2013 and the same was duly filled up by the petitioner and it is also recorded that no suggestion was given to the complainant at the time of his evidence that the cheque was given at the time of execution of the partnership deed, which as per the case of the petitioner was executed between the brother of the petitioner and the complainant. Thus, the evidence of the complainant, which fully supports the averments made in the complaint, has remained un rebutted. Learned counsel for the petitioner has not referred to any piece of evidence before this Court to show that the said evidence of CW-1 has been misread or misconstrued.

iv) Even the argument sought to be raised by learned counsel for the petitioner that the cheque was issued by the petitioner at the time of the execution of the partnership deed

between the brother of the petitioner and the complainant, is highly unbelievable. Apart from the fact that there is no evidence to substantiate the said plea, it is also highly improbable that when two persons are entering into a partnership, then a third person would issue a blank signed cheque as security without there being any writing to the effect that the cheque has been issued for security purposes. The said plea, as has rightly been observed by the appellate Court, does not even remotely rebut the presumption under Section 139 N.I.A. in favour of the complainant.

v) As has been recorded in paragraph 18 of the judgment of the Appellate Court, the petitioner had compromised the matter on 13.09.2019 and had stated that he would pay an amount of Rs.3.6 lacs in 12 installments and after having made the first installment of Rs.30,000/- on 21.10.2019, he had failed to appear before the Court and had not paid the balance amount. The said aspect has also not been rebutted before this Court. The same also shows that the petitioner has admitted his liability and thus, the same also adds to the fact that the issuance of cheque in question was for discharge of a legally enforceable debt.

vi) The petitioner had earlier filed CRR-1873-2022 which was withdrawn vide order dated 09.09.2022 with liberty to file a fresh petition after giving full and better particulars. Even in the present revision petition, no evidence or document has been annexed so as to raise any arguable plea. Even the plea with

respect to the loan amount being of Rs.3 lacs, whereas the cheque in question being to the tune of Rs.2,81,000/- is devoid of merits and deserves to be rejected. On a specific query put by this Court, learned counsel for the petitioner has fairly stated that he did not raise any such plea before the courts below. Further nothing has been shown to this Court that any such suggestion was given to CW-1 when he appeared in the witness box and thus, the said plea is apparently an afterthought. Moreover, it is the case of the complainant that it was after great persuasion that the petitioner had issued the cheque in question and thus, there could have been several factors for a cheque of lesser amount having been issued, including the fact that the petitioner was not willing to issue the cheque for an amount of Rs.3 lacs.

vii) No judgment has been cited by the learned counsel for the petitioner to support any of the argument raised by him.

10. Keeping in view the above said facts and circumstances, finding that there is no illegality or perversity in the impugned orders, the present petition is dismissed.

11. Pending miscellaneous application stands disposed of in view of the above said order.

(VIKAS BAHL)
JUDGE

October 10, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No