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

CRR-61-2022 (O&M)
Date of decision : 11.01.2022

Kuldeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Inderjit Sharma, Advocate for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment dated 07.09.2017 passed by the Chief Judicial Magistrate, Gurdaspur, vide which the petitioner had been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and had been sentenced as under:-

<i>Name of the convict</i>	<i>Under Section</i>	<i>R.I.</i>	<i>Fine</i>	<i>In default of payment of fine</i>
Kuldeep Singh	138 of Negotiable Instruments Act	Two (2) years	Rs.10,000/-	R.I. for one month

The period of detention already undergone by the convict, during trial of this case shall be set off against the substantive sentence. File be consigned to the record room,

Gurdaspur, after due indexation.”

Challenge has also been made to the judgment dated 06.12.2021 vide which the appeal preferred by the petitioner had been dismissed by the Sessions Judge, Gurdaspur and the conviction had been upheld.

The brief facts of the prosecution case are that the petitioner had taken a loan from the respondent-HDFC Bank Limited which was to be repaid alongwith the interest as per the terms and conditions of the agreement. The said amount was duly received in the account of the petitioner and as on 10.08.2016, an amount of Rs.16,48,026.44 was due from the petitioner and the cheque duly signed by the complainant dated 22.08.2016 for an amount of Rs.14,78,000/- was issued by the petitioner in favour of the complainant bank. The said cheque was presented before the Bank and was dishonoured with the remarks "Funds Insufficient" vide memo dated 05.09.2016. Legal notice dated 12.09.2016 was issued by the complainant through their counsel but in spite of the same, the petitioner had failed to make the payment and thus, complaint under Section 138 of the Act of 1881 was filed by the complainant.

The complainant-Bank had examined one Harminderpal Singh as CW1 who had fully supported the case of the complainant-Bank and had also produced on record cheque as Ex.C2, Memo dated 05.09.2016 as Ex.C3, Legal notice dated 12.09.2016 as Ex.C4 and postal receipt dated 12.09.2016 as Ex.C5 and also Statements of Account as Ex.C6 and Ex.C7.

The trial Court had convicted the petitioner under Section 138

of the Act of 1881 and sentenced him, as has been detailed hereinabove. The Sessions Judge, Gurdaspur had also dismissed the appeal preferred by the petitioner and while dismissing the appeal, the Sessions Judge, Gurdaspur had observed that it had not been disputed by the petitioner that the petitioner had availed a loan and that Statement of Account Ex.C6 showed that an amount of Rs.16,48,026.44 was due as on 10.08.2016 from the petitioner and, thus, the cheque was issued for the repayment of a legally enforceable debt. It was further observed that the petitioner had not disputed his signatures on the cheque Ex.C2 and under Section 139 of the Act of 1881, there is a presumption in favour of the holder of the cheque and the same was received for the discharge of the whole or in part of any debt or liability unless the contrary had to be proved by the petitioner. The argument to the effect that the present cheque was a security cheque was rejected by relying upon the judgment of the Delhi High Court in case titled as *M/s Constellation Enterprises Pvt. Ltd. & Anr. Vs. P.E.C. Limited*, reported as *2006(127) DLT 733*. It was further observed that the petitioner had failed to repay the loan installments and, thus, it was open to the complainant to encash the cheque and on the dishonour of the said cheque, to institute proceedings under Section 138 of the Act of 1881. It was also observed that the legal notice had been duly issued and the complaint had been filed within a period prescribed.

Learned counsel for the petitioner has submitted that in the present case, no agreement had been produced on record by the complainant-bank. It is further submitted that installment in the present

case was Rs.37,836/- and in case, the petitioner had failed to make the said payment, the bank could have filed a civil suit for recovery of the said amount. It is argued that although, the petitioner is ready to pay 25% of the total cheque amount in order to show his bona fide and to settle the matter but however, would not be able to pay the whole amount.

This Court has heard the learned counsel for the petitioner and has perused the record.

The Sessions Court had observed that the petitioner has not disputed the taking of loan from the complainant-Bank. Even before this Court, the taking of loan by the petitioner has not been disputed. The Statement of Account Ex.C6 had been taken into consideration by both the Courts below which shows that the amount which was due as on 10.08.2016 from the petitioner was Rs.16,48,026.44. The issuance of the cheque dated 22.08.2016 for an amount of Rs.14,78,000/- is thus for a legally enforceable debt. The signatures on the said cheque had neither been disputed before the Courts below nor before this Court. Nothing has been shown either to this Court or to the Courts below to show that the amount of loan had been repaid. Legal notice had been duly served and the complaint had been filed within a period of limitation.

The argument of learned counsel for the petitioner that the present cheque was a security cheque had been rejected by both the Courts below.

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.

In view of the abovesaid judgments and also in view of the facts of the present case, the said argument of the learned counsel for the petitioner that the present cheque was a security cheque is neither proved from the record nor is legally sustainable.

Even the arguments of the learned counsel for the petitioner to the effect that the loan agreement had not been produced on record and the complainant should have filed a civil suit for recovery, also does not deserve any merit. The factum with respect to the loan having been taken is not disputed. The issuance of cheque and the signatures on the same have also not been disputed. It is not the case of the petitioner that the loan had been repaid and even the Statement of Account Ex.C6 shows that an

amount of Rs.16,48,026.44 was due from the petitioner as on 10.08.2016. Further, once the cheque has been produced on record and outstanding amount has also been proved without there being any rebuttal to the same, then, the presumption under Section 139 of the Act of 1881 would operate in favour of the complainant. There is nothing on record to even remotely rebut the said presumption. The offer to pay 25% of the total amount is not sufficient inasmuch as, on a specific query put by the Court to the counsel for the petitioner, as to whether the petitioner is ready to pay the entire amount, learned counsel for the petitioner has answered the same in the negative. As per the judgment of Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal**, reported as **AIR 2010(SC) 1097**, even in case the matter has been compromised at the revisional stage, apart from the payment of the cheque amount, an additional amount of 15% of the cheque amount, is also required to be paid. Thus, the said plea of offering 25% of the cheque amount would also not absolve the petitioner of the offence committed by him.

Keeping in view the abovesaid facts and circumstances, the present Criminal Revision has no merits and is accordingly, dismissed.

Since, the main case has been decided, application bearing CRM-802-2022 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

11.01.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-
Whether reportable:-****Yes/No
Yes/No**