

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

**CRA-S-2385-SB-2012 (O&M)
Date of Pronouncement: 24.05.2023.**

Punjab State Civil Supplies Corporation Ltd. ...Appellant

vs.

Shiv Vardhan Rice Exports India Pvt. and others ...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Pankaj Kundra, Advocate for
Mr. Deepak Sabherwal, Advocate
For the appellant.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Sushant Kareer, Advocate and
Mr. Yugank Goyal, Advocate
For the respondents.

N.S.Shekhawat J.

1. By way of the present appeal, the appellant/complainant has assailed the impugned judgment dated 17.04.2008 passed by learned Judicial Magistrate 1st Class, Faridkot, whereby the respondents were ordered to be acquitted of the notice of accusation framed against them. The trial Court held that the appellant/complainant had failed to prove that there was some liability on behalf of the accused/respondents and the accused had issued the cheque in discharge of the liability.

2. The brief facts of the case are that the appellant/complainant filed the present complaint by alleging that the respondents No.2 to 5 were the Directors or Managing Directors of respondent No.1/accused Shiv Vardhan Rice Export India Pvt. Ltd., Faridkot Road, Village and Post Office Sadiq, district

Faridkot. The complainant alleged that there was shortage of paddy in the said mill, which was found during the physical verification. Ultimately, in discharge of their liability, the respondents No.2 to 5 had issued a cheque bearing No.323039 dated 13.07.2005 for a sum of Rs.8,33,219/- to the appellant/complainant and on presentation, the cheque was dishonoured. The notice was served on the respondents, but they did not make the payment despite service of notice and with these broad allegations, the complaint was filed in the Court of learned trial Court.

3. After appearance of the respondents and serving of notice under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act) upon the accused, the complainant examined Attar Chand Bhikhan as CW-1 and placed on record the Cheque Ex.P1, Postal receipts as Ex.P-2 to Ex.P6, notice Ex.P7, bank memo Ex.P8 to Ex.P11, registered postal letters as Ex.P12 to Ex.P14 and the evidence was ordered to be closed.

4. The statements of the accused/respondents were recorded under Section 313 Cr.P.C. and they had pleaded their false implication.

5. In defence, the respondents examined H.C. Sukhdev Singh as DW1 and placed a copy of FIR Ex.D1, Form No.32 as Ex.D2 and Ex.D3 and closed the evidence.

6. I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

7. Learned counsel for the appellant/complainant vehemently argued that in the present case, the respondents have been wrongly acquitted by the learned trial Court. The findings recorded by the learned trial Court are liable to be set aside only on the ground that in view of the provisions of Section 139 of

the Act, there was a presumption in favour of the holder of cheque and the respondents had led no evidence to rebut the said presumption. Apart from that, respondents never pleaded that the cheque was not issued by them or that they had never dealt with appellant/complainant and the cheque had been wrongly taken away by the appellant-Corporation.

8. The submissions have been refuted by learned counsel appearing on behalf of the respondents by contending that the appellant/complainant completely failed to prove that the cheque was issued in discharge of some legal liability and the appellant/complainant also did not lead any evidence to show that the respondents No.2 to 5 are the Directors or Managing Directors of respondent No.1.

9. After hearing learned counsel for both the sides, I am of the considered view that the findings recorded by the learned trial Court are legally sustainable. The only argument raised on behalf of the appellant/complainant is that under the provisions of Section 139 of the Act, there was a strong presumption in favour of the present appellant and the impugned judgment was liable to be reversed only on this ground. I find no merit in the said submissions. In fact, the initial burden of proving the charge against the respondents/ accused is always on the complainant. The complainant is under a bounden duty to adduce sufficient evidence in support of his complaint to establish on record that the cheque was issued in discharge of some legally enforceable liability. After the initial burden is discharged by the complainant, the statutory presumption under Section 139 of the Act comes to the rescue of the accused.

10. It has been held by the Hon'ble the Supreme Court in the matter of ***“Krishna Janardhan Bhat Vs. Dattatraya G. Hedge; Criminal Appeal No.518 of 2006***, decided on 11.01.2008, as follows:-

“The presumption of innocence is a human right. [See Narender Singh & Anr. v. State of M.P., 2004(3) RCR (Criminal) 613 : 2004(3) Apex Criminal 269 : (2004)10 SCC 699, Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr., 2005(2) Apex Criminal 389 : (2005)5 SCC 294 and Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director, 2007(1) RCR (Criminal) 166 : 2006(3) Apex Criminal 700 : (2007)1 SCC 70] Article 6(2) of the European Convention on Human Rights provides :

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". Although India is not bound by the aforementioned Convention and as such it may not be necessary like the countries forming European countries to bring common law into line with the Convention, a balancing of the accused rights and the interest of the society is required to be taken into consideration. In India, however, subject to the statutory interdicts, the said principle forms the basis of criminal jurisprudence. For the aforementioned purpose the nature of the offence, seriousness as also gravity thereof may be taken into consideration. The courts must be on guard to see that merely on the application of presumption as contemplated under Section 139 of the Negotiable Instruments Act, the same may not lead to injustice or mistaken conviction. It is for the aforementioned reasons that we have taken into consideration the decisions operating in the field where the difficulty of proving a negative has been emphasized. It is not suggested that a negative can never be proved but there are cases where such

difficulties are faced by the accused e.g., honest and reasonable mistake of fact. In a recent Article "The Presumption of Innocence and Reverse Burdens : A Balancing Duty" published in [2007] C.L.J. (March Part) 142 it has been stated :-

"In determining whether a reverse burden is compatible with the presumption of innocence regard should also be had to the pragmatics of proof. How difficult would it be for the prosecution to prove guilt without the reverse burden ? How easily could an innocent defendant discharge the reverse burden ? But courts will not allow these pragmatic considerations to override the legitimate rights of the defendant. Pragmatism will have greater sway where the reverse burden would not pose the risk of great injustice - where the offence is not too serious or the reverse burden only concerns a matter incidental to guilt. And greater weight will be given to prosecutorial efficiency in the regulatory environment."

34. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the courts shall put a blind eye to the ground realities. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the

materials brought on record and having regard to legal principles governing the same.”

11. Keeping in view the above referred principles of law and the facts of the instant case, it can be safely held that the appellant/complainant had completely failed to prove that the cheque in question was issued to him in discharge of some legally enforceable liability. It has been alleged by the complainant that some shortage was detected in the supply of paddy on the basis of physical verification in the premises of the respondents. However, the appellant/complainant completely failed to prove that there was shortage of paddy in the sheller of the accused and no physical verification report was proved on the file. Apart from that, no evidence was led by the present appellant/complainant to show that there existed any liability on the part of the respondents on account of shortage of paddy in the sheller of the respondents. Even neither documentary evidence was proved on record to exhibit the findings of the Physical Verification Committee nor any oral and documentary evidence was placed on record to show that the paddy was supplied to the respondents. The learned trial Court has rightly held that it was the duty of the appellant/complainant to prove by leading cogent evidence that the respondents were the Directors or Managing Directors at the relevant time. However, no evidence at all was led by the present appellant/complainant before the learned trial Court. Thus, this Court does not find any ground to interfere with the findings recorded by the learned trial Court.

12. In view of the above discussion, it is apparent that there is no material irregularity or illegality in the impugned judgment passed by the learned trial Court, which may warrant interference by this Court and the

impugned judgment judgment dated 17.04.2008 passed by learned Judicial Magistrate 1st Class, Faridkot is liable to be upheld by this Court and the present appeal is ordered to be dismissed.

13. Pending applications, if any, are also disposed off, accordingly.
14. Trial Court record be sent back.

(N.S.SHEKHAWAT)
JUDGE

24.05.2023
hemlata

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