235 **2023:PHHC:092815**

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1609-2021 (O&M)
DECIDED ON: 16th MAY, 2023

SWARAN SINGH VILASRA **.....PETITIONER**

VERSUS

STATE OF PUNJAB AND ANOTHER **.....RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. R.S. Sekhon, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Haryana.

Mr. Barjinder Singh, Advocate for
Mr. Mohit Sadana, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

1. The petitioner has challenged the judgments and orders of the Courts below whereby he has been convicted for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 and has been sentenced to undergo rigorous imprisonment for two years and to pay a compensation of Rs.8,50,000/- to the complainant.

2. The crux the case is that the complainant/respondent no.2-Davinder Kumar filed a complaint under Section 138 of Negotiable Instrument Act against the petitioner on 24.10.2017, alleging that the petitioner entered into an agreement to sell his house measuring 594 sq. feet i.e. 66 sq. yards, situated at village Longowal with complainant and his wife Smt. Anjali Mangal for a total consideration of Rs.6,00,000/-. On 22.01.2016, the petitioner received an amount of Rs.5,00,000/- as earnest money from the complainant and his wife. Accordingly, an agreement to sell was executed in

favour of complainant and his wife. The petitioner agreed to execute the registered sale deed uptill 30.06.2018 after receiving balance sale consideration amount from them and 'NOC' from the bank. Further, on 11.07.2016, the complainant gave Rs.30,000/- to the petitioner on his demand as he was in need of money. In July 2017, the petitioner approached the complainant and his wife requesting them that due to family dispute, they are not interested to sell the land and the petitioner wants to cancel the agreement to sell in question dated 22.01.2016 he further requested the complainant and his wife that, if, they are agree to cancel the same, he shall pay a total amount of Rs.8,50,000/- i.e.earnest money along-with interest. On 16.07.2017, due to cancellation of sale deed, accused issued a cheque bearing no.713305 dated 16.07.2017 amounting to Rs.8,50,000/- of State Bank of Patiala, Branch Longowal from his account no. SB 55087401390 to discharge his liability with the assurance that the cheque in question will be honoured. Upon his assurance, when the complainant presented the said cheque to his banker, the same was dishonoured due to "funds insufficient" in the account of the accused vide separate memo dated 08.09.2017. Consequently, he served him with a legal notice dated 21.09.2017 asking him to pay the cheque amount within 15 days on receipt of the legal notice, but to no avail. Thereafter, the complainant filed the complaint u/s 138 NI Act.

3. Learned counsel for the petitioner has vehemently contended that he has been falsely implicated in the present case and he has not signed writing of Ex.C6, vide which the cheque in question was given to the complainant. It is asserted that neither petitioner has issued a cheque nor has entered into an agreement to sell dated 22.01.2016. The observation given by the Courts below that respondent No.2/complainant borrowed an amount of

Rs.3,22,000/- from his relative Suresh Kumar and thereafter, he returned the said amount to his relative after withdrawing from his bank on 29.01.2016, is wrong as the complainant has never examined the said Suresh Kumar to prove the afore-said fact.

4. Learned State counsel assisted by the counsel for the complainant has contended that the petitioner had a legal liability of Rs.5,30,000/- in discharge of which, he had issued a cheque amounting to Rs.8,50,000/- each and when the said cheque was presented for encashment, the said cheque was returned with the remarks "Insufficient Finds" vide memo dated 08.09.2017 meaning thereby, that there is no amount in the account of the accused-petitioner equivalent to the amount of the cheque issued by him.

5. Heard learned counsel for the respective parties, at length.

6. The Apex Court in the case of ***Hiten P. Dalal Vs. Bratindranath Banerjee 2001 (3) RCR Criminal 460;,*** wherein, it has been held that both Sections 138 and 139 require that the Court shall presume the liability of the drawer of the cheques for the amounts for which the cheques were drawn.

7. The Supreme Court in the case of ***State of Madras Vs. Vaidyabatha Iyer, AIR 1958 SC 61***, has further held that it was obligatory on the Court to raise the presumption. 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 held 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).

8. It is well settled that the accused have to prove in the trial by cogent evidence that there was no debt or liability. Mere denial or rebuttal by the accused is clearly not enough. The fact that the cheque might be post dated one does not absolve the drawer of the cheque of the penal consequences of Section 138 of NI.

9. In the case in hand it is clearly mentioned in Ex.C6, that after giving the cheque, the agreement to sell would be returned, otherwise, the petitioner would execute a sale deed, therefore, the payment which is made in pursuance of such an agreement is considered to be a payment made in pursuance of a duly enforceable debt or liability for the purposes of Section 138. While recording his statement under Section 313 Cr.P.C., the petitioner took a plea that he had not entered into an agreement to sell dated 22.01.2016 and had not issued any cheque but during cross-examination he has taken contrary pleas.

10. In the light of afore-said discussions, this Court is of the considered view that there is no infirmity, perversity or illegality in the judgments and orders of the Courts below, as such the same are upheld.

11. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

16.05.2023
sham

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*