

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-3183-2014(O&M)

Date of Decision:-17.03.2023

Amarjeet Singh.

.....Appellant.

Versus

Om Pal & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Ms. Harpreet Kaur Dhillon, Advocate for the Petitioner.

Mr. Amit Parashar, Advocate for respondent no.1

Ms. Ramta Chowdhary, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 13.08.2014 passed by Additional Sessions Judge, Jind vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 24.04.2013 passed by the Judicial Magistrate Ist Class, Jind has been dismissed.

2. The brief facts of the case are that the complainant/respondent no.2 (hereinafter known as respondent no.2) and the accused/petitioner (hereinafter known as petitioner) had good relations and the petitioner borrowed a sum of Rs.2,50,000/- from the respondent no.2 in the month March 2010, for his personal necessities. The petitioner agreed to refund the amount to the Respondent no. 2 within five months. After the expiry of five

months the respondent no. 2 asked the petitioner to repay the amount. For discharging his liability the petitioner issued a cheque bearing no. 045948 dated 01.10.2010 for Rs. 2,50,000/- payable at State Bank of Patiala, Main Branch, Jind to the Respondent no. 2. The respondent no. 2 presented the cheque in his account maintained with State Bank of Patiala, Jind which was dishonoured vide return memo dated 12.10.2010 with the remarks "Account Closed." On receipt of information regarding dishonour of the cheque, the respondent no. 2 sent a legal demand notice dated 19.10.2010 to the petitioner through registered post, calling upon him to return the amount of Rs. 2,50,000/- within 15 days from the receipt of the notice but the petitioner failed to make the payment of Rs. 2,50,000/- to the respondent no.

2. Thereafter the present compliant came to be filed.

3. Based on the preliminary evidence lead, the accused/petitioner came to be summoned to face trial under Section 138 of the Negotiable Instrument Act.

4. On reading the complaint and preliminary evidence a prima facie case under section 138 Negotiable Instruments Act was made out. Hence, notice of accusation under Section 251 of Criminal Procedure Code (hereinafter referred to as Cr. P.C.) was served upon the petitioner, to which he pleaded not guilty and claimed trial and thereafter the matter was posted for complainant evidence.

5. The respondent no. 2, in order to bring home the guilt of the petitioner got examined himself as CW-1 and tendered his affidavit as Ex. CW-1/A. He proved Ex. C-1 cheque bearing No. 045948 dated 01.10.2010 of Rs. 2,50,000/-, Ex.C-2 cheque return memo dated 12.10.2010, Ex.C-3 postal receipt and Ex.C-4 legal notice dated 19.10.2010. After completion

of the evidence of the respondent No. 2, the petitioner was examined under Section 313 Cr.P.C. and all the incriminating evidence was put to him. He denied all the allegations leveled against him and stated that the case has been falsely set up against him.

6. In defence evidence, the petitioner got examined Gurmeet Singh as DW-1 and tendered affidavit Ex.DW-1/A and L.C. Suman as DW-2. He proved Ex.D-1 copy of application to S.P. Jind dated 12.08.2010, Ex.D-2 copy of statement of Jai Kumar, Ex.D-3 copy of compromise and Ex.D-4 attested copy of report of police and thereafter, the defence evidence was closed by the petitioner.

7. Based on the evidence lead the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years for the commission of the offence under Section 138 of the Negotiable Instrument Act, 1881 with fine of Rs. 10,000/-.

8. He preferred an appeal against the aforesaid judgment of conviction and the court of Additional Sessions Judge, Jind modified the sentence and reduced it to a period of one year. However, the amount of fine was enhanced from Rs. 10,000/- to Rs.30,000/-

9. The present revision petition has been preferred against the aforementioned orders.

10. The counsel for the petitioner contends that notice was not served upon the petitioner. There was no evidence to suggest that the respondent no.2/complainant had the necessary financial capacity to advance the loan to the petitioner. In fact the complainant/respondent was a money lender. The petitioner had borrowed a sum of Rs. 25,000/- and the same stood returned. However, the security cheque which had been given at

the time when the loan of Rs. 25,000/- was availed has been misused by the complainant. He therefore, contends that the judgments of conviction were liable to be set aside and the petitioner ought to be acquitted for having committed the offence Under Section 138 of the Negotiable Instrument Act, 1881.

11. The counsel for the complainant/respondent contends that notice had been duly served upon the petitioner. The address mentioned in the notice as also the complaint is same. The said ground had been raised by the petitioner and had been negated by the Trial Court and the Appellate Court. Even otherwise, in terms of the judgment in *C.C. Alavi Haji Vs. Palapetty Muhammand and Anr. 2007(3) R.C.R. (Criminal) 185*, the petitioner/accused could very well have repaid the amount within 15 days from receipt of the summons from the Court to escape prosecution. Once the same had not been done it did not lie in his mouth to contend that the notice has not been served. He further contends that there was absolutely no evidence to suggest that the complainant was a money-lender. The documents referred to by the defence would have no evidentiary value to substantiate the defence of the petitioner. So far as the financial capacity of the complainant to advance the loan is concerned, the Hon'ble Supreme Court in *Rohitbhai Jivanlal Patel Vs. State of Gujarat and another (2019) 2 R.C.R. (Criminal) 559* has held that there was no such requirement on the part of the complainant to show his financial capacity to advance the loan in question. In terms of Section 118 and 139 of the Negotiable Instrument Act once the signature of the accused on the cheque was admitted then there was a reverse onus on him to discharge the presumption imposed upon him. In the present case, the petitioner had been unable to discharge the

presumption and, therefore, had rightly been convicted. Reliance is placed on the judgment of the Hon'ble Supreme Court in **M/s Kalamani Tex Anr.**

Vs. P. Balasubramanian 2021(2) RCR (Criminal) 160.

12. I have heard counsel for the parties.

13. Before proceeding further, it would be apposite reproduce

Section 118 ad 139 of the Negotiable Instruments Act:-

“ Section 118 of Negotiable Instruments Act, 1881

118 Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Section 139 of Negotiable Instruments Act, 1881

[139. Presumption in favour of holder. —It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part,

of any debt or other liability.]”

14. The Hon’ble Supreme Court in ***Rohitbhai Jivanlal Patel Vs. State of Gujarat and another (2019) 2 R.C.R. (Criminal) 559*** has held as under:-

*“ 19. Here-in-above, we have examined in detail the findings of the Trial Court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the Trial Court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the Trial Court. **The observations of the Trial Court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in know of facts etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been of irrelevant factors for consideration of a probable defence of the appellant. Similarly, the factor that the complainant alleged the loan amount to be Rs.22,50,000/- and seven cheques being of Rs.3,00,000/- each leading to a deficit of Rs.1,50,000/-, is not even worth consideration***

for the purpose of the determination of real questions involved in the matter. May be, if the total amount of cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of Rs.22,50,000/-) was distinctly stated by the accused-appellant in the aforesaid acknowledgment dated 21.03.2017.

20. *On perusing the order of the Trial Court, it is noticed that the Trial Court proceeded to pass the order of acquittal on the mere ground of 'creation of doubt'. We are of the considered view that the Trial Court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by section 139 of the NI Act. In the scheme of the NI Act, mere creation of doubt is not sufficient.*

21. *The result of discussion in the foregoing paragraphs is that the major considerations on which the Trial Court chose to proceed clearly show its fundamental error of approach where, even after drawing the presumption, it had proceeded as if the complainant was to prove his case beyond reasonable doubt. Such being the fundamental flaw on the part of the Trial Court, the High Court cannot be said to have acted illegally or having exceeded its jurisdiction in reversing the judgment of acquittal. As noticed herein-above, in the present matter, the High Court has conscientiously and carefully taken into consideration the views of the Trial Court and after examining the evidence on record as a whole, found that the findings of the Trial Court are vitiated by perversity. Hence, interference by the High Court was inevitable; rather had to be made for just and proper decision of the matter.*

22. *For what has been discussed herein-above, the findings of the High Court convicting the accused-appellant for offence under section 138 of the NI Act deserves to be, and are, confirmed.”*

15. The Hon’ble Supreme Court in **M/s Kalamani Tex Anr. Vs.**

P. Balasubramanian 2021(2) RCR (Criminal) 160 has held as under:-

“ 14. Adverting to the case in hand, we find on a plain reading of its judgment that the trial Court completely overlooked the provisions and

*failed to appreciate the statutory presumption drawn under Section 118 and Section 139 of NIA. The Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. This point of law has been crystalized by this Court in **Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106, Para 18** in the following words:*

"In the case at hand, even after purportedly drawing the presumption under section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant-accused...."

15. *Once the 2nd Appellant had admitted his signatures on the cheque and the Deed, the trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial Court fell in error when it called upon the Complainant-Respondent to explain the circumstances under which the appellants were liable to pay. Such approach of the trial Court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law.*

16. *No doubt, and as correctly argued by senior counsel for the appellants, the presumptions raised under Section 118 and Section 139 are rebuttable in nature. As held in **MS Narayana Menon v. State of Kerela (2006) 6 SCC 39, Para 32**, which was relied upon in Basalingappa (supra), a probable defence needs to be raised, which must meet the standard of "preponderance of probability", and not mere possibility. These principles were also affirmed in the case of Kumar Exports (supra), wherein it was further held that a bare denial of passing of consideration would not aid the case of accused.*

17. *The appellants have banked upon the evidence of DW-1 to dispute the existence of any recoverable debt. However, his deposition merely highlights that the respondent had an overextended credit facility with the bank and his failure to update his account led to debt recovery proceedings. Such evidence does not disprove the appellants' liability and has a little bearing on the merits of the respondent's complaint. Similarly, the appellants' mere bald denial regarding genuineness of the Deed of*

Undertaking dated 07.11.2000, despite admitting the signatures of Appellant No. 2 thereupon, does not cast any doubt on the genuineness of the said document.

18. *Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite **Bir Singh v. Mukesh Kumar (2019) 4 SCC 197, Para 36**, where this court held that:*

"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."

19. *Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of 'preponderance of probability'. In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of the NIA.*

16. Coming back to the facts of the instant case, the contention of the petitioner that no notice was served upon him cannot be accepted. A perusal of the notice as also the complaint would show that the address mentioned in each document is the same. Further the Hon'ble Supreme Court in ***C.C. Alavi Haji Vs. Palapetty Muhammand and Anr. 2007(3) R.C.R. (Criminal) 185*** has held that the petitioner could very well have made the payment of the amount on receipt of the summons of the court. Therefore, at this stage the said argument carries not weight. Be that as it may, both the courts below have come to this conclusion that the notice was properly served upon the petitioner.

17. As regards, the complainant being a money lender having advanced an amount of Rs. 25,000/- to the petitioner and misusing the blank cheque given by the petitioner is concerned, it may be pointed out that though DW1 who is relative of the petitioner, has stated that the

complainant was working as a financier, he did not have any evidence of the said fact. However, taking the case of the petitioner to be true that the complainant was a money lender, a presumption under Section 118 read with Section 139 of the Negotiable Instruments Act, 1881 cannot be rebutted on this count alone as the signature on the cheque stands admitted and there is no principle of law as per which a financier cannot initiate a complaint under Section 138 of the Negotiable Instruments Act.

18. As regards the financial capacity of the complainant to advance a loan of Rs.2,50,000/- is concerned, a perusal of the judgments in *Rohitbhai Jivanlal Patel case (supra)* would clearly establish that there is no such requirement that the complainant must show the necessary financial capacity to advance the loan in question to an accused. Once the signatures are admitted, a statutory presumption arises that the cheque has been issued for the discharge of legally enforceable debt. Quite correctly the said presumption is rebuttable. However, in the present case nothing substantial has been brought on record to rebut the said presumption.

19. In view of the above discussion, I find no reason to interfere in the well reasoned judgments of the Trial Court as well as the Appellate Court and therefore, the present petition stand dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 17, 2023
Vinay

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