IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2601-2022 (O&M)
Date of Decision: 31.07.2023

RATTAN LAL NIRANIA …Petitioner

Versus

KIRAN DEVI …Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Karan Sachdeva, Advocate
for the petitioner.

Mr. ChiranjiLal, Advocate
for the respondent.

<u>HARSH BUNGER, J.</u>

The present revision petition has been filed by petitioner-Rattan LalNirania, who was convicted for the commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (here-in-after referred to as `the N.I. Act, 1881) vide judgment of conviction dated 05.05.2017 passed by learned Judicial Magistrate Ist Class, Abohar and vide order of sentence of the even date, he was sentenced to undergo rigorous imprisonment for one year along with fine of Rs.1,000/-. In default thereof, the petitioner was to further undergo imprisonment for one month.

2. The afore-said judgment of conviction and order of sentence has been upheld in appeal filed by the petitioner vide judgment dated 02.09.2021 passed by the learned Sessions Judge, Fazilka.

3. Aggrieved against the afore-said judgment dated 05.05.2017 passed by learned Judicial Magistrate Ist Class, Abohar and judgment dated 02.09.2021 passed by learned Sessions Judge, Fazilka, the petitioner has filed the instant revision petition.

4. Briefly, the respondent-complainant (Kiran Devi) filed a complaint under Section 138 of the N.I. Act on the plea that the petitioner herein, in discharge of his legal liability, issued a Cheque bearing No.500694 dated 10.10.2014 for Rs.02,50,000/-, drawn on `State Bank of India' Branch Bus Stand Road, Abohar, in favour of the respondent-complainant with the assurance that the said cheque would be honoured upon its presentation. However, when the said cheque was presented by the respondent-complainant for encashment through her banker `State Bank of India', then the same was returned vide Memo dated 23.12.2014 with the remarks "funds insufficient". Thereafter, a legal notice dated 06.01.2015 was sent to the petitioner herein. However, the petitioner did not make the payment within the stipulated period; accordingly, the complaint under Section 138 of the N.I. Act was filed.

5. After the preliminary evidence, the petitioner herein was summoned on 19.02.2015 to face trial for the offence under Section 138 of the N.I. Act. Upon appearance of the petitioner-accused and finding a triable case, notice of accusation was served upon him, to which, he pleaded not guilty and claimed trial.

6. At post notice evidence stage, the respondent-complainant (Kiran Devi) herself stepped into the witness box as CW-1 and tendered the following documents :-

Original cheque	*Ex. C1*
Memo	*Ex. C2*
Legal Notice	*Ex. C3*
Postal receipt	*Ex. C4*
Acknowledgment	*Ex. C5*

7. After the closure of evidence of the complainant, statement of the accused under Section 313 of the Code of Criminal Procedure, was recorded; wherein, the entire incriminating material was put to the accused. However, he pleaded innocence and false implication.

8. A further plea was taken that the complaint was filed on false and frivolous grounds as the complainant had no capacity at all to advance such huge amount to accused. The petitioner further pleaded that there was no consideration in respect of the cheque in question, in discharge of any kind of liability towards the complainant by him. It was the pleaded case of the petitioner that the complainant along with the petitioner had started a lucky scheme in the name of `Ganpati Lucky Scheme' in the area of Azimgarh, Abohar, which was a partnership scheme. The said scheme is stated to have failed; resultantly, the complainant as well as the petitioner suffered a loss. It was further pleaded that in order to compensate the loss, the complainant, who was working under Advocate Sh. Arvind Bajaj, from whom he earlier borrowed Rs.20,000/-on the basis of interest and has given a blank signed cheque for security purpose. It was stated that the amount of said cheque was already deposited with Sh. Arvind Bajaj, Advocate; however, the cheque was not returned to him by the said Advocate. The petitioner further claimed that the greed has prevailed in the mind of the complainant and she illegally got this above-said blank signed cheque from her Senior Advocate Sh. Arvind Bajaj and got filled the huge amount with the handwriting of Sh.Arvind Bajaj,Advocate and has filed the present case.

9. It is the case of the petitioner that the complainant had totally failed to prove any kind of debt or liability against him as no date, month and time has been mentioned in the complaint for the advancement of loan to him. It is the stand of the petitioner that the complainant had no source of

income as she was a student of Law and no document has been proved in respect of the dealing and transaction between the petitioner and the complainant. He further stated that he wanted to lead evidence.

10. In defence evidence,the petitioner examined DW1-Satnam Rai, Record Keeper, State Bank of India, Main Branch Abohar, who brought the statement of account of Kiran Devi (complainant) and Ramandeep Kumar son of Phool Chand as Ex. DW1/A and Ex. DW1/B, respectively.

11. Petitioner further examined DW-2 Roshni, official Assistant, Punjab Gramin Bank, Dharampura, who stated that she had brought the summoned record, which is Ex.DW2/A and copy of accounts as Ex.DW2/B. One Mohinder Kumar, Inspector Food and Civil Supplies, Abohar, was examined as DW-3, who brought the original summoned record i.e. blue ration card (Ex. DW3/A), distribution of wheat as per ration card (Ex. DW3/B), issuance of new ration card in favour of Phool Chand (Ex. DW3/C), rules and regulations regarding eligibility and non-eligibility of holding blue card (Ex. DW3/D) and condition regarding the eligibility of membership of the consumer and income being less than Rs.60,000/- per year for holder of blue card and a list approved by SDM Abohar, for issuance of blue card.

12. After considering the evidence/material available on the record, the learned trial Court convicted and sentenced the petitioner vide judgment dated 05.05.2017, as mentioned above. A further appeal filed by the petitioner against the aforesaid judgment of conviction and sentence dated 05.05.2017 also came to be dismissed by the Court of learned Sessions Judge, Fazilka vide judgment dated 02.09.2021. Accordingly, the petitioner has filed the present Criminal Revision petition.

13. Learned counsel for the petitioner has submitted that the learned Courts below have failed to consider and appreciate the facts as

well as the evidence available on the record of the case. It is submitted that the respondent-complainant had failed to prove the ingredients of offence under Section 138 of the N.I. Act and have wrongly convicted the petitioner. Learned counsel for the petitioner submits that the complainant had failed to prove her source of income and has also failed to prove the legal liability of the petitioner. It is submitted that the complainant along with her family members was holding a blue card, which reflected the incapacity of the respondent-complainant for advancing loan. It is stated that there is no material on the record to prove the transaction in question and thus, the learned Courts below had erred in law and facts in convicting and sentencing the petitioner. Accordingly, it is prayed that the present revision petition may be accepted and the impugned judgments passed by the Courts below may be set aside.

14. On the other hand, learned counsel for the respondent submitted that the learned trial Court has rightly appreciated the evidence available on record and convicted the petitioner under Section 138 of the N.I. Act and was accordingly sentenced. He further submitted that even the lower Appellate Court has considered the entire case and correctly appreciated the evidence as well as findings returned by learned trial Court and accordingly dismissed the appeal of the petitioner and upholding the conviction and sentence. He submits that there is no illegality or perversity in the impugned judgments; accordingly, he prayed for dismissal of this petition.

15. I have heard learned counsel for the parties and perused the paper book as well as the impugned judgments passed by the learned Courts below, with their able assistance.

16. The learned trial Court, after considering the evidence

available on the record, convicted the petitioner by holding as under :-

> *"16. Ld. Counsel for the accused firstly argued that accused alongwith complainant has started a lucky scheme in the name of Ganpati Lucky scheme in the area of Azimgarh and the said scheme failed and both the complainant and he suffered a loss in the said scheme and the said and in order to compensate the loss, the complainant whose working under the juniorship of Sh. Arvind Bajaj Advocate from where he earlier borrowed Rs. 20,000/- on the basis of interest and given a blank signed present cheque for security which he already deposited with Sh. Arvind Bajaj Advocate but the present cheque was not received by him from the said Sh. Arvind Bajaj, Advocate. He further argued that now greed has prevailed in the mind of complainant and she illegally got the abovesaid blank signed cheque from her senior Advocate Sh. Arvind Bajaj and got filled the huge amount and filed the present case. In this regard this court is of the considered view that firstly the accused has failed to brought on record any oral as well as any documentary evidence to prove any such above stated scheme which was being run by him alongwith the complainant. Secondly as far as his argument that the cheque has been obtained by the complainant from Sh. Arvind Bajaj Advocate, in this regard the accused has not filed any application before the court to summon the said advocate as a witness in the court. Rather he has only given aapplication to direct the said advocate to give his specimen handwriting but has not given any application to summon him as witness in order to prove his case. Further he has not brought on record any oral or documentary evidence regarding taking any money or regarding security cheque from the said advocate as alleged by him. Further if for the sake of argument, we assume that the cheque was given by the accused to Sh. Arvind Bajaj as security purpose, then also as accused has stated that he has returned the said amount to*

Sh. Arvind Bajaj Advocate then why he has not taken his security cheque back. Further he has also failed to brought on record any notice given by him to Sh. Arvind Bajaj Advocate for demanding his security cheque from him. Even he has not brought on record any application given by him to any of the authorities for the alleged misuse of the cheque in question, against Sh. Arvind Bajaj or the complainant. So, the mere contention without evidence is not acceptable.

17. Ld. Counsel for the accused has further argued that the cheque in question was never presented in the bank and in this regard he has tendered evidence documents i.e. copy of RTI Ex.D4, postal order Ex.D5, postal receipt Ex.D6, report of RTI of SBI dated 12.4.17 Ex.D7, registered cover Ex.D8 and further argued that as per Ex.D7 his account was closed on 6 June, 2013 therefore, the complaint under section 138 is not maintainable against him. In this regard this court finds that the complainant has tendered into evidence document Ex.C2 memo of SBI Bank wherein the reason for return of cheque has been mentioned as funds insufficient and not the account closed. Further the accused has not objected the said document at the stage of evidence. Further the counsel for the accused has not put any single suggestion to the complainant that Ex.C2 is a forged and fabricated document and is not issued by the bank. Moreover it is not the case of the accused that the memo is a forged and fabricated document. Therefore, this contention is also not tenable.

18. Ld. Counsel for the accused further argued that the complainant is student of law and she is not having the financial capacity to lend such a huge amount. In this regard this court finds that the complainant has stated in her cross-examination her brother Ajay Kumar is doing private work and taking Rs. 6000/- per month salary from the said shop. She further stated that her brother namely Raman Kumar is in a private company ITC (Sales Man of Tea). She further admitted that they are having agricultural *land in Rajsahatn in village Balochia. The abovesaid land is not under her ownership the same is under the ownership of her grandmother. She further stated that they sold three buffaloes and they also do the work of selling milk in the area of Azimgarh. She has further stated that she is not having personal business in her name thereafter she vol. stated that she is doing the work of stitching in her house. Further Ld. Counsel for the accused has not put any single suggestion to the complainant that she is not doing the work of stitching or they have not sold any buffaloes as alleged by her or they are not doing the work of selling milk in the area. Even he himself put a suggestion that it is correct that the house in which they are residing they keep the buffaloes in the said house. Therefore in the considered view of this court the accused is not entitled to acquittal on this score alone.*

19. Though accused has not denied his signatures and execution of the cheque in question. He has merely stated that the cheque has been issued under some other circumstances and the same has been misused by the complainant but the said plea has not been proved on record. Therefore, in this regard this court is fortified by the law laid down by ***Hon'ble Punjab & Haryana High court in a case titled as "Gurmeet Singh Vs State of Haryana & anr." 2012 (P&H) has categorically laid down that where the accused has admitted his signatures on the cheque in question he can not escape his liability u/s 138 N.I. ACt of even if the amount date and other particulars are filled up by other person. So, in view of this law laid down by Hon'ble Punjab & Haryana High Court, if the accused has admitted his signatures on the cheque in question he can not wriggle out from his liability u/s 138 on the pretext that the other contents of the cheque are not filled up by him. Hence, this contention of the defence is also not acceptable.*** *In the present case also as the accused cannot wriggle out from his liability.*

20. Ld. counsel has further submitted that complainant has failed to prove his case against the accused. There is a presumption embodied in section 139 of Negotiable Instrument Act which runs as under:

> ***"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"*** *this presumption starts with the opening word "it shall be presumed unless the contrary is proved. The initial presumption of the consideration is in favour of the complainant. The word "unless contrary is proved", means to suggest that the burden to rebut his presumption is upon the accused but accused has failed to rebut this. Hence presumption stands un-rebutted.*

21. In the light of these circumstances I am of the considered opinion that accused had issued the cheque in question in favour of the complainant for the discharge of legally enforceable liability outstanding in favour of the complainant.

22. Hence, in view of the discussion made hereinabove I hereby hold the accused guilty and convict the accused for the commission of an offence under section 138 of Negotiable Instrument Act."

17. The afore-said judgment of conviction and order of sentence was impugned by the petitioner by way of filing an appeal before the learned Sessions Judge, Fazilka. Learned Sessions Judge, Fazilka, considered the case in detail and dismissed the appeal of the petitioner vide judgment dated 02.09.2021, by holding as under :-

"10. Assailing the judgment of conviction and order of sentence, the present appeal was brought by the

accused/convict Rattan Lal, but on 16.08.2021, appellant willfully absented from proceedings, without any intimation.

It is pertinent to mention that Appellant had been playing hide-and-seek with this Court. On a previous date i.e. on 11.05.2021, the appellant, who is statedly working as a Clerk of an Advocate at Abohar had not turned up and had sought exemption, which was allowed but on 01.06.2021,when he failed to appear, his said concession was withdrawn and bail bonds and surety bond submitted/furnished by him were also cancelled and forfeited to the State. His presence was ordered to be procured through arrest warrants for 09.07.2021. However on 09.07.2021, appellant appeared alongwith copy of order dated 07.07.2021 passed by the Hon'ble High Court in CRM-M-25571 of 2021 and in compliance thereof, surrender of the appellant was accepted. He was directed to furnish fresh personal bonds, which were duly furnished.

On 12.08.2021, the appellant submitted that he was prepared to reach a compromise with the complainant-respondent, but as Shri Sunil Mehra Advocate representing the respondent was not physically present, he was heard through Video conferencing. At that time it was submitted by Shri Sunil Mehra Advocate representing the respondent that if the entire payment to her satisfaction is made by the appellant, Kirna Devi shall have no objection in entering a compromise. Appellant assured to make part payment under compromise on the next date, which was fixed as 16.08.2021, but on 16.08.2021, appellant opted to again absent from the proceedings, without any intimation and as such, this Court was left with no option but to cancel his bail/surety bonds and to forfeit it to the State. His presence was again ordered to be procured through arrest warrants for 02.09.2021 i.e. for today, but today again, he has failed to appear. However, his learned counsel as well as counsel for the respondent was heard at a considerable length.

11. As per the averments contained in the complaint as well as the plea taken by the appellant/accused in his defence (while getting his statement under section 313 Cr.P.C. recorded) it can be well made out that both the parties were known to each other, as the appellant has categorically stated that he along with complainant started a lucky scheme in the name of 'Ganpati Lucky Scheme' in the area of Azimgarh, Abohar, but the said scheme failed and both of them suffered loss.

It has also come in the cross-examination of complainant (recorded on 28.01.2016) that accused Rattan Lal was her co-student in LL.B. She was put a suggestion that whether accused was a clerk of Shri D.S. Brar, Advocate, Abohar, to which she pleaded her ignorance by voluntary stating that she had seen the accused as Clerk of Shri Harpreet Singh Advocate, when both Shri Harpreet Singh Advocate and Shri Arvind Bajaj Advocate were working together. These admissions are sufficient to hold that both the parties were working at the same place i.e. Abohar. As such both the parties knew each other well.

12. The only defence taken by the accused is that a false complaint has been filed against him by misusing the cheque already in possession of Shri Arvind Bajaj Advocate, from whom, he (accused) had earlier borrowed a sum of Rs. 20,000/- and at the time of borrowing the said amount, Shri Arvind Bajaj got issued a blank signed cheque from him as security purpose. The appellant has further pleaded that later on he returned the borrowed amount to Mr. Bajaj, but he did not demand his blank signed cheque from him, which Mr. Bajaj handed over to his Junior Advocate i.e. the complainant to file the present false complaint against him.

It is pertinent to mention here that accused had moved an application before learned Trial Magistrate seeking direction for Sh. Arvind Bajaj Advocate to furnish specimen writing in the Court for the purpose of *comparison with the contents filled in the cheque in question for expert opinion to prove that the cheque in question is forged and fabricated and for grant of permission to take photographs by averring that he wants to prove that the cheque in question was forged and fabricated and its body writing is not in his hand, but his said application was dismissed by the learned Trial Magistrate vide order dated 16.09.2016 by observing that while getting his statement recorded under section 313 Cr.P.C. the accused has submitted that he had put his signatures upon a blank cheque as security.*

It seems that no appeal or revision was preferred by the appellant assailing said order. Had the appellant been seriously pressing his said defence, he would have definitely assailed order dated 16.09.2016, as it was of vital importance for him, but to no avail. Anyways it reflects upon his defence plea.

Accused/appellant has also failed to spell out as to what was his compulsion to furnish a blank signed cheque to the abovesaid Advocate, if he was raising a small amount of Rs. 20,000/-. It is equally astonishing as to why he did not insist in obtaining his said blank signed cheque back from Shri Arvind Bajaj Advocate, once he had repaid the borrowed money of Rs. 20,000/- to him. In any case, if his said blank signed cheque had been misused with active connivance of Shri Arvind Bajaj Advocate, why did he not proceed against him by filing an appropriate criminal complaint. All such questions had been asking an appropriate reply which the accused/appellant has failed to render, thus exposing his plea of furnishing a blank signed cheque as a measure of security to Shri Arvind Bajaj and thereafter its misuse by the present complainant.

13. It is relevant to note that when after dishonourment of the cheque vide memo dated 23.12.2014 (Ex. C2), a demand notice dated 06.01.2015 (Ex. C3) was issued by the complainant to the accused vide postal receipt Ex.C4, it was duly received by the accused which is evident *from the acknowledge Ex.C5, but despite receipt of the demand/legal notice, accused failed to furnish its befitting reply. Had some such reply mentioning above defence would have been taken, it may have benefited him as otherwise his said defence plea besides being belated appears coined.*

14. It was vehemently submitted by learned defence counsel that the complainant was not at all in a capacity to finance such an hefty amount of Rs. 2,50,000/- to the accused in the year 2014, as she belonged to a poor family and was a Law student at the relevant time. In order to support his contentions, learned counsel for the appellant took this Court through the photographs Ex. D1, Ex. D2 reflecting boundary wall of the house of the complainant, but it has been well explained by the complainant while facing the test of cross-examination that in said part of the house they used to tether cattle.

Accused/appellant has proved account statement of complainant as Ex.DW1/A (maintained with SBI, Abohar) w.e.f.27.08.2014 to 25.09.2016,that of her brother Ramandeep Kumar maintained with the said bank w.e.f. 27.08.2014 to 25.09.2016 Ex.DW1/Baswell as account statement of her mother Bimla maintained with Punjab Gramin Bank, Dharampura w.e.f. 01.11.2014 to 15.10.2016, Ex. DW2/B. After taking this court through these account statements, his learned counsel urged that the complainant was not in a position to finance amount of Rs. 2,50,000/- to the accused and moreover, family of the complainant was availing benefits from the Punjab Govt. by projecting themselves as 'Economically weaker section/backward class'. Besides these documents, the accused has also tendered copy of application u/s 125 Cr.P.C. etc. between Bimla Rani and Phool Chand i.e. the parents of the complainant and on the strength of these documents, learned defence counsel submitted that when the mother of the complainant herself was demanding maintenance from her husband, then where was the *financial capacity of the complainant to pay the disputed amount to him, but again I am not convinced with thse arguments of learned counsel because it has been well explained by the complainant during her cross-examination that she herself was earning money from her profession, besides borrowing some money from her brother Raman Kumar who was doing a Private job. She also narrated that she had also been selling the milk.*

Ex.D7 is the copy of information dated 12.04.2017 supplied by State Bank of India to applicant Rattan Lal under R.T.I. Act reflecting that his saving account no. 20069863458 was opened on 10.09.2019 and the same was closed on 06.06.2013. Learned defence counsel vehemently submitted that when the account of the accused stood already closed on 06.06.2013, then how could he issue a cheque in favour of any person afterwards as the disputed cheque bears the date 10.10.2014.

After giving my anxious thought I am unable to agree withthis contention of learned defence counsel. A careful perusal of cheque return memo dated 23.12.2014 issued by State Bank of India, Mandi No.4, Abohar (Ex. C2) indicates that as the cheque was returned due to the reason 'Funds insufficient". The said memo has not been challenged by the accused on any occasion by alleging it to be a false.

15. An application u/s 391Cr.P.C.was moved by the appellant/accused Rattan Lal Nirania on 21.05.2019 seeking permission to lead additional evidence by submitting that infact cheque in question was not presented and dishonoured in his account as no transaction took place in his account and the same was closed since2013.

This application was contested by the respondent by admitting that the accused may have closed his account since 2013, but it was alleged that the cheque in question was issued by the appellant malafidely to cheat and defraud the respondent.

I have gone through the file. From perusal of the record, it transpires as if the accused had already closed his account before issuance of the disputed cheque dated 10.10.2014. IF it is so why did he not move the present application, to substantiate his said plea, before the trial Magistrate? It seems that the present application has been moved at a belated stage on some legal advise to absolve himself of a potent legal liability. Therefore, finding no merit in the application, the same is hereby dismissed.

Going further even if for a while it is presumed that after closure of his bank account in the year 2013, he could not have issued any cheque out of it, but where is the proof that he deposited blank/unused cheques to his banker at the time of alleged closure of his account? If the accused was of the view that the disputed cheque had been retained by Advocate Shri Arvind Bajaj as security, he should have mentioned it to his banker at the time of alleged closure of the account that one of the cheque in blank has been retained by someone, but to no avail.

16. Although the accused raised an edifice of his defence upon an instance of running a Lucky scheme by him and the complainant jointly in the name of M/S Ganpati Lucky Scheme, in which, they allegedly incurred losses, but no document pertaining to the said Lucky scheme was proved on record, thus again indicating as if the said plea has been invented by the accused/appellant for a purpose.

17. As such, in view of the aforesaid observations based on the material on record, the presumptions contained in Section139 and Section 118 of Negotiable Instrument Act, can legally be drawn. At the same time, onus also shifted upon his shoulders to make out that when this cheque was drawn, he was not under any legal liability to pay the sum mentioned therein, but this onus has not been discharged by him at thetrial.

Even in the grounds of appeal, nothing tangible has been mentioned to make out that the judgment of

GURPREET KAUR
2023.08.21 15:11
I attest to the accuracy and
authenticity of this order/judgment

conviction or order of sentence is not as per law. As such, I uphold the judgment of conviction.

18. As regarding the order of sentence, a sentence of one year R.I. and fine of Rs.1,000/-has been imposed. Due to unauthorized absence of the accused/appellant from this Court, he has lost all grounds to pray for leniency and consequently, I uphold the order of sentence. As such, the appeal is dismissed.

However,any amount paid by the appellant to the complainant, if any, during the trial/appeal shall be adjusted against the cheque amount.

19. As already noted, since the appellant/convict Rattan Lal Nirania is absent from the Court, so warrants regarding execution of sentence awarded by ld. trial court be prepared and sent to Learned Chief Judicial Magistrate, Fazilka for taking further necessary action for the execution of sentence of appellant/accused Rattan Lal Nirania. A copy of this judgment alongwith record of learned Trial Court be sent back to the quarter concerned forthwith. Appeal file be consigned to the Record Room, Fazilka."

18. A perusal of the findings recorded by the learned lower Appellate Court would manifest that the petitioner had absented from the proceedings without any intimation and even his bail/surety bonds were cancelled and forfeited to the State. However, the petitioner approached this Court by way of filing ***CRM-M-25571-2021***, whereupon, on the basis of order dated 07.07.2021, the surrender of the petitioner was accepted by the lower Appellate Court and he was directed to furnish fresh bail bonds, which were furnished by him. Further on 12.08.2021, a submission was made on behalf of the petitioner that he was prepared to enter into a compromise with the complaint and assured that he would make part payment under compromise on the next date i.e. 16.08.2021. However, the

petitioner again absented from the proceedings without any intimation and his bail/surety bonds were again cancelled.

19. Be that as it may, the plea taken by the petitioner is that he had borrowed a sum of Rs.20,000/- from Sh. Arvind Bajaj, Advocate and in order to secure the said payment, he had issued a blank signed cheque as "security" to Sh. Arvind Bajaj, Advocate. The petitioner claims that he had returned the borrowed amount to Mr. Bajaj but he did not demand his blank signed cheque from him. It was claimed that Mr. Bajaj handed over the aforesaid blank signed cheque of petitioner to his junior Advocate i.e. the complainant to file the present complaint. However, it is observed that the petitioner herein moved an application before the learned trial Court, seeking a direction to Sh. Arvind Bajaj, Advocate, to furnish specimen writing in the Court for the purpose of comparison with the contents filled in the cheque in question, for expert opinion to prove that the cheque in question, is forged and fabricated. The said application was dismissed by the learned trial Court vide order dated 16.09.2016 and the same was never assailed in any appeal or revision by the petitioner. Had the petitioner been seriously pressing upon the said defence, then he would have assailed the order dated 16.09.2016, as the same was of vital importance and the same reflected upon his defence plea. Furthermore, there is no explanation for non-demanding of the cheque in question by petitioner from Sh. Arvind Bajaj, Advocate, once he had allegedly re-paid the borrowed amount. Still further, it is not forthcoming as to why no action was taken against Sh. Bajaj, by instituting appropriate proceedings.

20. As regards the financial capacity of the respondent-complainant is concerned, on the basis of evidence led before the Court, the learned lower Appellate Court has returned the finding that the complainant herself was earning money from her profession besides borrowing some

money from her brother Raman Kumar, who was doing a private job and also the narration that she had been selling the milk. The learned lower Appellate Court has also considered the plea of the petitioner that as per Exhibit D7, which is an information supplied by the State Bank of India to the petitioner under RTI Act, reflecting that his saving account was closed on 06.06.2013 then how he could have issued a cheque in favour of any person afterwards. Learned lower Appellate Court has observed that since the cheque was returned due to reason "funds insufficient" vide Memo dated 23.12.2014 and the said Memo having not been challenged by the petitioner on any occasion by alleging it to be false, accordingly no worth was found in the said plea of the petitioner. It has been observed by the lower Appellate Court that even if it is assumed that the account of the petitioner was closed in the year 2013, then he could not have issued any cheque. There is no proof that the petitioner deposited the un-used cheques to his banker at the time of closure of the account. It has also been noticed by the lower Appellate Court that the petitioner had not informed his bank at the time of the alleged closure of account that one of the blank cheque had been retained by someone. Even the defence on the basis of the alleged Lucky scheme stated to have been floated by the petitioner along with the complainant, was not proved on the record.

21. I have considered the submissions made on behalf of the petitioner and also the findings returned by learned Courts below and is of the considered view that based on the material on the record, the learned Courts have rightly drawn the presumption contained in Sections 139 and 118 of the N.I. Act and the petitioner had failed to discharge the onus to prove that he was not under any legal liability to pay the sum. The perusal of the findings given by the Courts below show that these have been given

as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law.

22. No other argument was raised

23. In view of the above discussion, the instant revision petition is bereft of any merit and the same is accordingly dismissed and the judgment dated 05.05.2017 passed by learned Judicial Magistrate Ist Class, Abohar and as affirmed by learned lower Appellate Court vide order dated 02.09.2021, is upheld.

24. All pending application/s, if any, shall stand closed.

July 31st, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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