IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

114 **CRR-26-2024**
Date of Decision: 09.01.2024

HEERA LAL

... Petitioner

VERSUS

ASHOK KUMAR

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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Present: Mr. S.K. Tripathi, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J. (ORAL)

The instant Revision Petition has been filed for setting aside the impugned judgments/orders dated 03.11.2022/05.11.2022 passed by the Judicial Magistrate Ist Class, Faridabad and the judgment dated 30.11.2023 passed by the Addl. Sessions Judge, Faridabad convicting and sentencing the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred to as ‘N.I. Act’.)

Succinctly, the case of the petitioner is that the respondent-complainant had lodged a complaint under Section 138 of the N.I. Act on the ground that on 26.05.2016, the petitioner had borrowed a friendly loan of Rs.5,00,000/- from the respondent-complainant. The respondent complainant advanced another amount of Rs.1,00,000/- to the petitioner-accused on 30.05.2016. In order to discharge his lawful and legal liability, the petitioner had issued Cheque No.000013 dated 10.02.2019 for a sum of Rs.6,00,000/- in favour of the respondent-complainant. The respondent-complainant presented the said cheque to his banker for encashment, however, the same was dishonourned due to the reason "funds insufficient." Accordingly, the respondent-complainant lodged a criminal complaint against the petitioner under Section 138 of the N.I. Act.

Upon filing of complaint, the petitioner was summoned and tried by the trial Court and upon conclusion of trial, the trial Court found the petitioner guilty of the offence punishable under Section 138 of the N.I. Act and consequently convicted the petitioner vide judgment dated 03.11.2022 and sentenced the petitioner vide order 05.11.2022 to undergo simple imprisonment for a period of three months besides payment of compensation of Rs.10,00,000/- to the respondent-complainant under Section 357(3) of the Cr.P.C.

Feeling aggrieved of the said judgment of conviction and order of sentence, the petitioner-accused preferred an appeal before the Addl. Sessions Judge, Faridabad, who, after hearing both the parties, did not find any merit in the appeal and dismissed the same vide judgment dated 30.11.2023 while upholding the judgment/order dated 03/05.11.2022 passed by the trial Court.

Consequently, the petitioner has knocked at the door of this High Court seeking relief against the impugned judgments/orders.

I have heard the learned counsel for the petitioner at length and have gone through the material available on record with his able assistance.

The learned counsel for the petitioner contends that both the Courts below have utterly failed to appreciate the defence evidence led by the petitioner. He further contends that the respondent-complainant has not been able to prove his case of lending of friendly loan to the petitioner. Both the Courts below have not perused the case file and evidence judiciously and have not applied their judicial mind. They have given undue weightage to the case of the respondent-complainant and have totally ignored the defence version. He further contends that both the Courts below have not appreciated the basic law and the relevant laws have not been considered which were produced by the defence counsel. The findings given by the Courts below are against law and facts. Hence, the impugned judgments/orders of conviction and sentence are liable to be set aside and the petitioner is liable to be acquitted.

After hearing the learned counsel for the petitioner-accused, this Court is of the considered opinion that in a complaint under Section 138 of the N.I. Act, the Court has to see, at the first instance, that as to whether the cheque has been issue in favour of the complainant and that the cheque in question bears the signatures of the accused or not. Once the accused admits his signatures on the cheque, the onus shifts upon the accused to rebut the presumption under Section 139 of the N.I. Act. If the accused succeeds in rebutting the said presumption, he may be exonerated of the offence and may be acquitted, otherwise, the Court may convict/sentence the accused.

Perusal of the record clearly shows that the petitioner-accused has nowhere denied his signatures on the cheque in question. The entire evidence shows that the petitioner-accused has stressed upon the fact that the loan was not advanced to him, rather the loan was advanced to his wife Laxmi and two cheques of the petitioner-accused and one of witness Devender had been taken as security and inspite of returning the entire loan amount, the respondent-complainant did to hand over the said security cheques and later on, he has misused the same by way of filing the complaint in question. Various civil disputes amongst the parties have also been referred to in order to substantiate the defence taken by the petitioner-accused.

This Court has failed to see any cogent and material evidence on the part of the petitioner-accused, which may show that presumption under Section 139 of the N.I. Act has been successfully rebutted by the petitioner-accused. On the other hand, the respondent-complainant has proved his case very well by bringing on record the Chque in question (Ex.C1), which bears the signature of the petitioner accused, the dishonor memo (Ex.C2), the statutory notice (Ex.C3), postal receipt (Ex.C4) with regard to service of statutory notice upon the petitioner-accused and the statement of account Ex.C5. It is also apparently clear from the perusal of the record that the petitioner-accused has not even answered the legal notice served upon him by the respondent-complainant. Besides documentary evidence, the petitioner-accused has examined himself as DW-1, his wife Laxmi as DW-2 and Devender as DW-3 in order to prove his defence. No other defence evidence has been led by the petitioner-accused to disprove the allegations levelled in the complaint. In the case titled as ***K.N. Beena Vs. Muniyappam, (2001) 4 RCR (Criminal) 545,*** the Hon'ble Supreme Court has held that under Section, 118, unless the contrary is proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 of the N.I. Act, the Court has to presume that the holder of the cheque received the cheque for discharge, in whole or in part, unless the contrary is prove.

In the instant case, the petitioner-accused utterly failed to prove the contrary; rather on the other hand, the entire emphasis has been laid on the fact that the cheque in question was for the purpose of security and not in lieu of discharging any debt or liability. Even the depositions of the DW-2 and DW-3 are of no help to the petitioner-respondent, since they are not able to rebut the presumption drawn against the petitioner-accused under Section 139 of the N.I. Act. The burden to rebut the presumption is always on the accused and mere denial by an accused, does not shift the burden on the complainant. Even otherwise, said Laxmi is wife of the petitioner and the Devender is known to him. Meaning thereby, the petitioner-accused has not examined any independent witness to prove his defence. The said defence witness namely Laxmi, being wife of the petitioner-accused, may be construed as an interested witness and thus, her deposition is not credible and liable to be ignored. No other defence evidence has been led by the petitioner-accused on record.

From the perusal of the entire record, it is crystal clear that the petitioner-accused has utterly failed to rebut the presumption under Section 139 of the N.I. Act and the as such, I do not find any illegally, perversity and impropriety in the judgments/orders passed by the Courts below. Hence, the same are affirmed and the present Revision Petition is dismissed in limine.

(SANDEEP MOUDGIL)
JUDGE

09.01.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No