IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(111) **CRR-682-2022 (O&M)**
Decided on : 11.12.2024

Sandeep Bakshi and another …Petitioners

Versus

Manju Raj Kumar ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Piyush Aggarwal, Advocate (Legal Aid Counsel)
for the petitioners.

Mr. Rajesh Gaur, Addl. AG, Haryana.

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KULDEEP TIWARI, J.(Oral)

1. Through the instant revision, challenge is thrown to the judgment of conviction dated 31.08.2019 and order of sentence dated 02.09.2019, passed by the learned Judicial Magistrate Ist Class, Faridabad, vide which, on the complaint filed by Manju Raj Kumar-respondent (herein) under Sections 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the Act of 1881"), the petitioner had been convicted under Section 138 of the Act of 1881, and had been sentenced to undergo simple imprisonment for a period of six months and was also ordered to pay compensation of an amount of Rs.2,00,000/- to the complainant within a period of one month from the date of passing of the judgment.

2. In addition, challenge has also been made to the judgment dated 24.03.2022 passed by the learned Additional Sessions Judge, Faridabad, whereby, the appeal preferred by the present petitioner was dismissed and the judgment of conviction dated 31.08.2019 and order of sentence dated

02.09.2019, passed by the learned trial Court concerned, was affirmed.

FACTS OF THE CASE

3. The brief facts of the case are that respondent/complainant Manju Raj Kumar, had filed a complaint under Sections 138 of the Act of 1881, against the petitioner for dishonour of Cheque Nos.018958 dated 13.09.2017, 018960 dated 16.09.2017 and 018962 dated 15.09.2017, for an amount of Rs.45,000/- each, all drawn on ICICI Bank (for short ***'the cheques in question'***), for encashment, which were presented on assurance of the petitioner, but the same were returned back unpaid with the remarks ***'funds insufficient'***.

4. The respondent/complainant filed a complaint under Section 138 of the Act of 1881, with the averment that she gave an amount of Rs.7,35,000/- (Seven Lacs Thirty-five Thousand only) to the petitioners for the purpose of purchasing the House No.1839-A, Housing Board, Sector 55, Faridabad, and entered into agreement to sell with the petitioners in the year 2008, and when the respondent/complainant requested the petitioners either to execute and get the sale deed of the aforesaid house in question in her name on the basis of prior agreement to sell between respondent and petitioners entered between them in the year 2008, or refund the said amount, the petitioner-Sandeep Bakshi, admitted his legal and enforceable liability to refund the total amount of Rs.9,80,000/-, out of which, he paid the cash amount of Rs.50,000/- to the respondent/complainant, and also issued 20 cheques in her name, total amounting to Rs.9,30,000/-. It is further averred in complaint that at the time of handing over the cheques, the petitioners assured to the respondent/complainant that she would have right to receive the rent of the aforesaid house, in question until her amount is completely refunded by

the petitioners to her. However, when the respondent/complainant on the instructions of petitioner presented Cheque No. 018959 dated 29.08.2017 for Rs.45,000/- drawn on ICICI Bank, for encashment, the same was returned back unpaid with the remarks of “Funds Insufficient” vide return memo dated 11.09.2017; presented Cheque No.018958 dated 13.09.2017; Cheque No. 018960 dated 16.09.2017 and Cheque No.018962 dated 15.09.2017, each for Rs.45,000/- all drawn on ICICI Bank for encashment, but same were returned back unpaid with the remarks “Funds Insufficient” vide return memos dated 21.09.2017. Thereafter, as per the averment in the complaint, a legal notice dated 09.10.2017 was sent to petitioners calling upon them to make the payment but as per the respondent/complainant, no payment was made to her. On appearance of the petitioners in the Court, notice of acquisition was served upon the petitioners and after preliminary evidence of the respondent/complainant; the petitioners were summoned to face trial for offence under Section 138 of the Act of 1881.

5. It is a matter of record that there was an agreement to sell between the petitioners/accused and the respondent/complainant, in the year 2008. Accused persons induced the complainant by showing her the house, stating that the said house belongs to one Sua Ram, and he is ready and willing to execute the sale deed in favour of anyone, who is ready to pay Rs.1,00,000/- (bank liability towards the said property). Furthermore, the accused persons introduced one person stating to be Sua Ram, with the respondent/complainant. However, the complainant came to know later that the said person was not Sua Ram, rather, he was someone else.

6. The complainant took a loan, against the gold ornaments and arranged some amount and paid the petitioners/accused a sum of Rs.60,000/-

on dated 30.03.2014. It is further stated that at the time of making the payment, the accused persons assured the complainant that they will get the sale deed registered in favour of the complainant, for which, the accused persons demanded more money, and subsequently, they told the complainant that Sua Ram, has refused to execute the sale deed. The petitioners/accused persons took the original agreement to sell and cash receipts thereof, by playing fraud upon the complainant.

7. After hearing the arguments and considering the evidence and the documents on record, the learned trial Court concerned, had convicted the petitioner under Section 138 of the Act of 1881, and had sentenced him to undergo imprisonment, as stated hereinabove. An appeal preferred by the petitioner against the judgment of conviction and order of sentence, passed by the learned trial Court concerned, was also dismissed vide judgment dated 24.03.2022, passed by the learned Appellate Court concerned.

8. Aggrieved with the concurrent findings of the both the learned Courts below, the petitioners preferred the instant criminal revision petition.

9. A coordinate Bench of this Court, vide order dated 04.05.2022, had released the petitioner on interim bail, as the petitioners has deposited the demand draft of Rs.1,00,000/-, with the Registry of this Court, to show their *bona fide* to settle the matter with the complainant amicably. On dated 02.04.2024, learned counsel for the petitioners submitted that the petitioners wants to fully settle the dispute with the complainant and wants to deposit the full compensation amount.

10. In view of the statement suffered by the learned counsel for the petitioners on dated 02.04.2024, this Court directed the petitioners to deposit the remaining amount of Rs.1,00,000/-, with the Registry of this Court,

within a period of one month. However, the above directions issued by this Court, on dated 02.04.2024, has not been complied with by the petitioners, rather, on the adjourned date, learned counsel for the petitioners informs this Court that, he has no instructions from the petitioners, which further led to this Court to issue bailable warrants against the petitioners, however, the same could not be executed.

11. On 14.10.2024, no one has caused appearance on behalf of the petitioners. Therefore, Mr. Piyush Aggarwal, Advocate (PH/1878/2021, Mobile No.99888-82950), who was present in the Court, was appointed as Legal Aid counsel, for the petitioners, and the Registry was also directed to supply the complete paper book of the petition to Mr. Piyush Aggarwal, Advocate, in order to enable him to address the arguments on the next date of hearing.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE PETITIONER

12. Learned counsel for the petitioner contended that the disputed cheques were issued, as blank signed security cheques, in favour of the complainant's deceased father-in-law, who was a property dealer. He further claimed that the petitioner and the father-in-law of the complainant were into the business of the property dealing. He also asserted that the complaint was a false and fabricated, claiming that the complainant has misused the cheques after the demise of her father-in-law.

13. Learned counsel further submits that the Courts below have failed to consider the petitioner's defence, as recorded in his oral evidence, marked as Ex.DW, wherein, it was specifically contended therein, that the complainant, along with her father-in-law, operated a joint property dealing business, and the cheques in question were issued to the father-in-law of the

complainant, as security cheques and not to the complainant and that too as security cheques and hence no offence under Section 138 of the Act of 1881, is made out in the present complaint, qua the petitioners.

14. The Courts below have erred in holding that the petitioner's admission of signatures and the amount on the cheques, in question triggers the statutory presumption under Sections 118 and 139 of the Act of 1881, and that the cheques were issued towards a legally enforceable debt or liability. While the petitioner has admitted his signatures and the amount on the cheque, he has unequivocally deposed that the cheques were issued to the complainant's father-in-law and not to the complainant. This crucial defence has been ignored by the Courts below, solely on the statutory presumptions under Sections 118 and 139, to convict the petitioner under Section 138 of the Act of 1881. The Courts have failed to consider that such presumptions must be evaluated in conjunction with the facts and circumstances of the case. The impugned judgments have been rendered in a mechanical manner, without proper appreciation of the evidence and arguments advanced, necessitating interference by this Court.

15. Learned counsel for the petitioner in continuance of the arguments submits that the Courts below have totally ignored the defence of the petitioner, while strongly relying upon the statutory presumptions, which in fact, does not arise in the instant case, as the respondent/complainant has failed to discharge the initial onus, by proving that the petitioner is required to discharge legally enforceable debt. The defence, as led by the petitioner ought to have been given the equal weightage, as has been given to the respondent/complainant. He further points out some factual inconsistency in the impugned judgment of conviction and order of sentence. Finally, he

submits that in the instant case, all the necessary ingredients for constituting an offence under Section 138 of the Act of 1881, are missing.

16. This Court has heard the rival submissions as made by the learned counsel for the parties concerned, and has also perused the judgment of conviction and order of sentence.

17. This Court does not find any perversity or illegality in the judgment/order, which is challenged by filing the instant statutory criminal revision petition. Though the learned counsel for the petitioner/accused, has taken a specific defence that the blank cheques were given to the father-in-law of the complainant. However, he has not led any evidence to support his contentions. His bald submissions were rightly rejected by the learned Courts below. The petitioner has categorically admitted the issuance of cheques and signatures on the cheques, and therefore, onus is rightly shifted upon him in view of the statutory presumptions, which the petitioner has failed to discharge. Therefore, the instant revision petition, being bereft of merits, is **dismissed**.

(KULDEEP TIWARI)
JUDGE

December 11, 2024
Manpreet

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