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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Criminal Revision No.681 of 2016
Date of Decision: 05.11.2024

Sunder Lal and another ... Petitioners

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Naresh Kumar Manchanda, Advocate,
for the petitioners.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

Mr. Avikaran Bansal, Advocate,
for respondent No.2.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed by the petitioners challenging the judgment of conviction and order on quantum of sentence both dated 16.02.2015 passed by the learned Judicial Magistrate 1st Class, Faridkot in Criminal Complaint bearing No.RT 717 of 2014 titled as *Satwant Singh v. Sunder Lal and another* whereby the petitioners had been held guilty under Section 138 of the Negotiable Instruments Act, 1881 (For short “Act”) and were sentenced to undergo imprisonment for a period of six months and to pay fine of Rs.2500/- each and in default of

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payment of fine, they were further sentenced to undergo imprisonment for fifteen days more and the judgment dated 04.02.2016 as passed by the Court of learned Additional Sessions Judge, Faridkot in Criminal Appeal bearing CIS No.CRA/45 of 2015 titled as *Sunder Lal and another v. Satwant Singh* thereby affirming the judgment/order dated 16.02.2015 passed by the Magistrate.

2. For the sake of continuity and coherence, parties shall be referred to hereinafter as per the same nomenclature as given before the trial Magistrate.

3. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned complaint had been filed by the complainant Satwant Singh against the accused on the allegations that they had jointly borrowed an amount of Rs.2,50,000/- from him on 01.12.2012. To discharge their legal obligation, to repay the borrowed amount, they had issued a joint post dated cheque bearing No.045631 dated 12.12.2012 for a sum of Rs.2,50,000/- out of their joint account in favour of the complainant. The said cheque when presented before the banker of the complainant was dishonoured and returned with the remarks "Insufficient Funds". The complainant orally asked the accused to repay the amount of cheque but in vain. He was constrained to send legal notices to both the accused on 15.12.2012. The accused refused to receive notices and to make payment of the amount in question even after expiry of statutory period, thereby compelling the complainant to file the aforementioned complaint.

4. After considering the preliminary evidence led by the

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complainant, the learned Magistrate passed order dated 09.01.2013 thereby issuing process against the accused. On their appearance, they were admitted to bail and on finding a prima facie case, notice of accusation under Section 138 of the Act was served upon them. They pleaded not guilty to the notice and claimed trial.

5. The complainant produced oral as well as documentary evidence in support of the allegations as levelled in the complaint.

6. Statements of accused were recorded under Section 313 of Cr.P.C. wherein they abjured their guilt and pleaded false implication. It was pleaded by them that no amount of money had been borrowed by them from the complainant nor he was in a position to give the same and further that he had been playing fraud upon innocent persons and an FIR for commission of offence of cheating had been lodged against himself.

7. In defence evidence, the accused examined three witnesses. Several documents had also been adduced. After considering the evidence produced on record by both the parties and giving due deliberations to the contentions as raised by their respective counsel, the learned trial Magistrate held the accused guilty and convicted them in the manner as already indicated.

8. Feeling aggrieved, the accused filed an appeal before the Lower Appellate Court, which had been dismissed as mentioned above.

9. The present petition has been filed on the grounds and it is argued by learned counsel for the petitioners-accused that the impugned judgment of conviction and order on quantum of sentence as passed by

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learned trial Magistrate and the judgment passed by the learned Additional Sessions Judge, Faridkot are liable to be set aside as while recording findings of guilt of the accused, the learned trial Magistrate did not appreciate the evidence produced on record in a proper manner. A non-speaking and perverse order had been passed. The Courts below also did not consider the fact that the complainant-respondent No.2 had failed to prove the fact that he had ever advanced any loan to the accused. No record in the form of account books or income tax returns had been produced to show that he had lent an amount of Rs.2,50,000/- to the accused. No sufficient evidence had come on record to prove that the cheque in question was issued in discharge of a legally enforceable debt or liability. The learned Courts below also did not appreciate the fact that it stood proved on record that the complainant was a money lender involved in advancing small amounts of loan to needy persons and obtained blank cheques as security and by filling excessive amount of money in those blank cheques, misused the same by filing complaints against innocent persons like the accused to extort money. It is further argued that the accused had also produced on record Ex.D11 copy of FIR No.119 dated 27.04.2013 registered at Police Station City Faridkot against the complainant and some other persons for committing offences of cheating and forgery but his act and conduct had not taken into consideration by the learned Courts below.

10. It is further argued that the learned Courts below wrongly relied upon the ocular evidence of the complainant and proceeded to hold the accused guilty for commission of offence under Section 138 of the Act. With

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these broad submissions, it is urged that the impugned judgments are liable to be set aside, the revision petition deserves to be accepted and the petitioners-accused deserve to be acquitted. To fortify his argument, learned counsel for the petitioners-accused has placed reliance upon the authorities cited as **Narsi Dass v. Surender**, 2015 (1) R.C.R. (Civil) 108; **Balbir Singh v. Raj Krishan**, 2015 (2) R.C.R. (Criminal) 812 and **Mohinder Singh v. Inder Paul Singh @ Pappu**, 2017 (3) L.A.R. 622.

11. Per contra, it was argued by learned counsel for respondent No.2 that there was overwhelming evidence on record to prove that the petitioners-accused had taken an amount of Rs.2,50,000/- from the respondent No.2-complainant on 01.12.2012 and to discharge their liability, had jointly issued a postdated cheque which had been dishonoured. The petitioners-accused had not denied their signatures on the cheque in question. Contradictory stands had been taken by them. It stood established that the cheque in question was issued by them to discharge their legally enforceable debt and was not issued as security. They themselves had ascribed the body writing of the cheque Ex.C1. They had contradicted their own stand regarding obtaining loan from the respondent No.2-complainant. The findings as given by the Courts below were well reasoned and did not warrant any interference. Therefore, it is argued that the petition does not deserve to be allowed.

12. I have heard learned counsel for the parties at considerable length and have gone through the record.

13. At the outset, it would be necessary to examine the scope and

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ambit of the presumptions to be raised as envisaged by the provisions of Sections 118 and 139 of the Act since once signatures on a cheque are admitted by the accused, then presumptions raised under the aforementioned provisions are available to the complainant. Section 118 of the Act lays down some special rules of evidence relating to presumption. It provides presumption to be raised until the contrary is proved, as to consideration, as to the date of instrument, as to the time of acceptance, as to time of transfer, as to order of endorsement and as to the holder being a holder in due course. Then Section 139 of the Act includes the presumption regarding existence of a legally enforceable debt or liability and that the holder of the cheque is also presumed to have received the same in discharge of such debt or liability. In **Rangappa vs. Sri Mohan**, 2010 (3) Criminal Court Cases 022 (S.C.), while observing so, the Hon'ble Supreme Court had further held that the presumption of the existence of legally enforceable debt or liability is, of course, rebuttable and it is open to an accused to raise a defence, wherein the existence of a legally enforceable debt or liability can be contested. Without doubt, the initial presumption is in favour of the complainant. The principles relating to the provisions of Sections 118 and 139 of the Act as summarized through various judicial pronouncements are as under:-

- (i) Once the execution of cheque is admitted, Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
- (ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

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(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence.

(iv) Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. (**Basalingappa Vs. Mudibasappa**, 2020 SCC OnLine SC 491).

Section 139 of the Act provides that it shall be presumed unless the contrary is proved, that the holder of the cheque received the cheque of the nature referred to in Section 138 of the Act for the discharge, in whole or in part, of any debt or other liability. Applying the definition of the word 'proved' in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes clear that in a trial under Section 138 of the Act, a presumption has to be made that every negotiable instrument was made or drawn for consideration and it was executed for discharge of debt or liability. Once the execution of a negotiable instrument is either proved or admitted or as soon as the complainant in a particular case discharges the burden of proving that the instrument was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act shift the burden on the accused.

14. In the light of the aforementioned legal position, it is required to be seen by this Court as to whether the petitioners-accused have been able to probabalise their defence.

15. In the instant case, the petitioners-accused have not denied the fact that the cheque Ex.C1 was bearing their signatures. They did not even

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dispute the fact that the body of the cheque was also ascribed by them. The plea as set up by them before the learned trial Court while recording their statements under Section 313 of Cr.P.C., was that they had not borrowed any amount of money from the complainant nor he was in a position to give the huge amount of Rs.2,50,000/- to them. They further took a defence plea that the respondent-complainant was habitual of filing false and fabricated litigation against innocent persons and the cheque in question was also from the abovesaid act of the complainant. Even while cross-examining the respondent No.2-complainant, no plea that the cheque in question was not written and signed by them had been taken. Meaning thereby that they did not deny the execution, signing and issuance of the cheque in question. No doubt, they had produced documentary evidence to show that the respondent No.2-complainant was involved in a case of cheating and forgery etc. and some complaints had also been filed against him. However, the question is as to whether by taking such plea, they were absolved of their liability. It was also not disputed by them that the cheque in question was dishonoured and had been returned unpaid due to insufficiency of funds. They have not even given reply to the legal notice served upon them. From a perusal of the trial Court judgment, it is revealed that on the one hand, there was complete denial qua the factum of borrowing any money from the respondent No.2-complainant but on the other hand, a plea had been taken by the petitioners-accused that the cheque in question was issued by them as a security and excessive amount had been filled upon by the respondent No.2-complainant.

The learned trial Court had disbelieved the plea and rightly so, by observing

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that the petitioners themselves had ascribed the body writing of the cheque in question. The fact that there was no denial on the part of the petitioners that the cheque in question was bearing their signatures and writing, was sufficient to invoke the presumptions under Sections 118 and 139 of the Act. The accused had to probabalise the defence that the cheque in question was issued by way of security. However, there is nothing on record to show that they succeeded in proving this plea.

16. More so, it is revealed from the record that before the Lower Appellate Court that the plea as taken by the present petitioners-accused was that the excessive amount had been filled in the cheque in dispute. Once they admitted issuance of the cheque in question and even ascribing the writing of the same, then the plea that excessive amount had been filled, could not be believed and the fact that they had infact borrowed amount of Rs.2,50,000/- from the respondent No.2 also stood proved. Even on considering the stand taken by them to the effect that the cheque in question was issued by way of security, the fact that they had issued the same to discharge their legally enforceable debt stands established. The plea taken by the petitioners-accused as to the respondent-complainant being involved in money lending business violating the provisions of Section 58 of the Act, had been rightly not accepted by the Courts below in view of the fact that they had failed to probabalise this defence plea by producing any cogent and convincing evidence. In **Balbir Singh's** case (Supra), the complainant was dealing in money lending business to public at large without holding any licence. It was observed that advancement of loan by him was illegal and he

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could also be prosecuted. In **Narsi Dass's** Case (Supra), the accused had taken loan of Rs.1.50 lakhs from the complainant who was a commission agent. The cheque issued by him to repay the loan had been dishonoured. It was observed that since it was common knowledge that the commission agents used to obtain blank cheques from farmers as security, not in lieu of any legal liability, the accused was not liable. In **Mohinder Singh's** case (Supra), the complainant was doing money lending business. It was proved that the accused had issued the cheque for recovery of money advanced to him by way of cash by the complainant who was not having any licence. It was held that the complainant could not enforce his claim into the cheque in question which was used in illegal money lending transaction. In the instant case, the allegation that the respondent No.2-complainant was engaged in money lending business had not been proved by the petitioners-accused by leading any convincing evidence. As such, the ratio of law as laid down in the above cited authorities is not applicable to the peculiar facts and circumstances of the present case.

17. Once the petitioners-accused admitted their signatures on the cheque in question not only by making suggestions to the complainant but also in their statements recorded under Section 313 of Cr.P.C. and then in their defence evidence, in the considered opinion of this Court, the existence of legal liability did not remain in dispute at all, in view of the presumption under Section 139 of the Act. As per these discussed facts, this Court is of the opinion that the learned trial Magistrate had rightly concluded that the respondent-complainant had discharged the burden under Sections 118 and

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139 of the Act and the burden had shifted upon the petitioners to prove that they did not issue the cheque in question and that it was not issued for any legally recoverable debt or liability. The petitioners-accused had an option to prove the non-existence of consideration and debt or liability either by leading any evidence or to show any particular circumstance of such nature which was so probable that any prudent man could presume that no such consideration and debt existed. It is well settled proposition of law that to rebut statutory presumption, the accused is not expected to prove his defence beyond reasonable doubt as is expected from the complainant in a criminal trial but he should bring on record such facts and circumstances which on consideration prove that the debt and the consideration did not exist or their non-existence was very much probable to disprove the presumption which has not been so proved by the petitioners-accused by leading any such evidence which could be acted and relied upon beyond probabilities of all reasonable doubt. As such, this Court sees no reason to interfere with the findings recorded by the Courts below which are well reasoned. Accordingly, the same are affirmed. Consequently, the petition is dismissed.

05.11.2024
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(MANISHA BATRA)
JUDGE

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