



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-2231-2018 (O&M)
Date of decision: 21.11.2024

Shanker Shah

...Petitioner

Versus

Devender Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Vaibhav Parashar, Advocate for the petitioner.

None for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. The present revision petition has been filed by the petitioner/accused against the judgment and order dated 10/15.11.2016 passed by the Court of Judicial Magistrate Ist Class, Faridabad whereby the petitioner was convicted and sentenced to imprisonment for a period of one year and to pay a compensation worth Rs.4.5 lacs under Section 138 NI Act and judgment dated 16.04.2018 passed by the Court of Additional Sessions Judge, Faridabad whereby the appeal filed by petitioner against judgment and order of the trial Court dated 10/15.11.2016, was dismissed.

2. The complainant/respondent filed criminal complaint under Section 138 NI Act wherein it was alleged that petitioner took friendly loan of Rs.3 lacs from him on 19.04.2014 with a promise to repay the same within a period of 15 days. Separate receipt was also executed between the parties regarding aforesaid payment. Thereafter, in order to discharge his legal liability, petitioner issued cheque No.454568 dated 04.05.2014 worth Rs.3 lacs in favour of the respondent, drawn on Canara Bank, Tikona Park, Faridabad. However, on its presentation, the cheque was dishonored vide memo dated 06.05.2014 with the remarks 'funds insufficient'. Then a legal



notice dated 17.07.2014 was sent under Section 138 NI Act through registered post to the petitioner. However, the petitioner failed to make the payment of cheque amount within stipulated period, despite due service of notice. On this, the respondent filed criminal complaint under Section 138 NI Act against the petitioner on 16.08.2014.

3. After recording the preliminary evidence, process against the petitioner was issued and he appeared in the Court and was admitted to bail. Notice of acquisition was served to which the petitioner pleaded not guilty.

4. Statement of petitioner under Section 263(g) Cr.P.C was recorded wherein he admitted his signature on the cheque in question. However, he pleaded that blank signed cheque given by him as a security regarding loan of Rs.1 lac, was later on misused by respondent.

5. In order to prove his case, complainant Devender Kumar appeared in the witness box as CW-1 and he tendered cheque Ex.C-1, bank memos Ex.C-2 and Ex.C-3, legal notice dated 17.07.2014 Ex.C-4, postal receipt Ex.C-5, statement of account of complainant Ex.C-6 and receipt Ex.C-7.

6. In his defence, petitioner/accused examined DW-1 Jai Kishan.

7. After hearing the counsel for the parties, the learned trial Court convicted and sentenced the petitioner vide judgment/order dated 10/15.11.2016, as is detailed above.

8. Being aggrieved, the petitioner filed appeal which was also dismissed by the Court of Additional Sessions Judge, Faridabad vide judgment dated 16.04.2018.

9. The petitioner being aggrieved of the judgments passed by the Courts below, has filed the present revision petition, wherein none appeared on behalf of the respondent, despite due service.

10. I have heard the counsel for the petitioner.

11. Admittedly, petitioner has taken defence that he handed over one blank signed security cheque to the respondent and the same was misused by the respondent without his consent. Petitioner has not disputed his signatures on the cheque in question.

12. Section 118 of NI Act provides that it shall be presumed, until



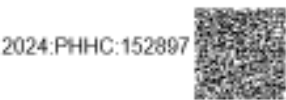
the contrary is proved that every negotiable instrument was made or drawn for consideration. Section 139 of NI Act stipulates that unless the contrary is proved, it shall be presumed that the holder of the cheque, received the cheque, for the discharge of whole or part of any debt or liability. The Hon'ble Supreme Court in ***Rangappa Vs. Sri Mohan 2010 (11) SCC 441*** held that once issuance of a cheque and signature thereon are admitted, the presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. Earlier also similar view was taken by the Hon'ble Supreme Court in ***K.N. Bhaskaran Vs. Sankaran Vaidhyan Balan 1999 (3) Civil Court Cases 385 Supreme Court***. Even, recently also the same view is reiterated by Hon'ble Supreme Court in ***Bir Singh Vs. Mukesh Kumar 2019 (4) SCC 197***.

13. Thus, it is settled law that the initial presumption favours the complainant. However, the said presumption is rebuttable. If the accused rebutted the presumption then burden shifts back to the complainant. After going through the record, this Court is of the view that both the Courts below rightly concluded that petitioner/accused has not put forth plausible defence to rebut the presumption.

14. In the instant case, petitioner has also taken the defence that it was the security cheque which was misused by the respondent. The Hon'ble Supreme Court in Criminal Appeal Nos.1269-1270 of 2021 titled as ***Sripati Singh (since deceased) Through his son Gaurav Singh Vs. State of Jharkhand and Another***, decided on 28.10.2021 has held that dishonor of cheque issued as a security can also attract offence under Section 138 NI Act.

15. In light of the above discussion, this Court is of the view that no ground for interference is made out in the present revision petition, as the counsel for the petitioner has failed to point out any illegality or perversity in the impugned judgments.

16. Consequently, the present revision petition is hereby dismissed being devoid of merits.



17. The petitioner/accused is on bail in this case. His bail/surety bonds shall stand cancelled. The Chief Judicial Magistrate concerned, shall get the petitioner/accused arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps to comply with this order and submit compliance report to this Court within a period of three months from the date of receipt of a copy thereof.

21.11.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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