



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

249

**CRR-515-2025 (O&M)
Date of decision: 02.04.2025**

Karnail Singh

....Petitioner

Versus

M/s. Haryana Agro Industries Corporation Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Brijender Kaushik, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition is preferred against judgment dated 18.11.2024 passed by learned Additional Sessions Judge, Ambala whereby the judgment of conviction dated 10.10.2018 and order of sentence dated 11.10.2018 passed by learned Judicial Magistrate, First Class, Ambala were upheld in the case stemming from criminal complaint No.516 registered under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter 'NI Act').

2. Briefly, the facts are that petitioner, respondents No.4 and 5 are partners in M/s Sandeep Rice Mills-respondent No.3. On 31.10.2013, respondent No.3 entered into an agreement with the Governor of Haryana through respondent No.2 for custom milling of rice from the paddy procured by the respondents No.1 and 2 in order to supply it to the FCI. Accordingly, respondent No.3 received 4328.56



metric tons of paddy from the respondents No.1 and 2 and was required to deliver 2900.14 metric tons rice after custom milling it. However, respondent No.3 delivered only 2104.77 metric tons of rice to the FCI. Therefore, on 29.01.2015, a notice was issued by respondents No.1 and 2 to respondent No.3 stating that it owed an amount of Rs.2,93,78,050/- for 795.38 metric ton less rice, which is in contravention of their agreement. In order to discharge the said debt, the petitioner issued a cheque bearing No.000021 dated 29.01.2015 for Rs.50,00,000/-. The same was, however, dishonoured vide memo dated 30.01.2015 with the remarks- 'funds insufficient.' Since the amount due remained unpaid, in spite of serving legal notice dated 23.02.2015, complaint (supra) was instituted.

3. After assessing all material on record, the learned trial Court convicted the petitioner vide judgment dated 10.10.2018 and sentenced him to simple imprisonment for 02 years as well as to compensate the complainant by paying Rs.50,00,000/- to them. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court which was also dismissed.

4. Learned counsel for the petitioner *inter alia* contends that the learned Courts below have completely disregarded the fact that the complaint(supra) was filed by respondent No.2, on behalf of respondent No.1, a registered company under the Companies Act, 2013. However, nothing available on the record indicates that a resolution was passed by the Board of Directors that would authorise respondent No.2 to initiate



prosecution. Further, the alleged agreement dated 31.10.2013 was executed between respondent No.3-the firm and the Governor of Haryana, through District Magistrate. No agreement was executed between respondents No.1 and 3, therefore, respondent No.3 cannot be made liable towards respondent No.1. Therefore, it cannot be said that the disputed cheque was issued towards discharge of a legally enforceable debt. Finally, a compromise was arrived at between respondents No.1 and 4, resulting in acquittal of respondent No.4. However, the liability should have been shouldered by the firm i.e. respondent No.3 and respondent No.4 cannot be freed merely because he paid a certain amount towards the settlement. Further still respondent No.1 has no authority to enter into a partial compromise. In fact, the learned Court below has upheld the conviction of the petitioner while acquitting his partner in a similar but separate appeal.

5. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it appears that respondent No.2 was duly authorised to initiate prosecution in the present case, as a government official bears the power to delegate responsibilities to his sub-ordinates. However, for further analysis, a study of Sections 118 and 139 of the NI Act are warranted, which read as follows:

Section 118. Presumptions as to negotiable instruments.-

Until the contrary is proved, the following presumptions shall be made:

(a) of consideration:-- that every negotiable instrument was made or drawn for consideration, and that every such



*instrument, when it has been accepted, indorsed,
negotiated or transferred, was accepted, indorsed,
negotiated or transferred for consideration;*

XXX

XXX

XXX

Section 139. Presumption in favour of holder-

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.

6. It is no longer *res integra* that these presumptions are of a rebuttable nature. While, the onus to prove the guilt of the accused rests on the prosecution, once the facts required to form the basis of these presumptions in law exist, the Court is duty bound to draw the conclusion as stipulated by the statute. However, the accused is not barred from presenting evidence in his defence. The accused is only required to raise a probable defence casting a doubt on the existence of consideration which he can do by adducing direct evidence, circumstantial evidence or even on the basis of presumptions of law or fact. Furthermore, if he can explain the circumstances that would indicate his innocence, it is not mandatory for the accused to adduce evidence as the material available on record itself can be looked at from a new perspective. Thereafter, the burden shifts back to the prosecution to reply to and negate the rebuttal made by the accused. The standard of proof in an offence under the NI Act is that of civil proceedings i.e. preponderance of probabilities. Since the burden of proof on the



accused is not as heavy as the prosecution, he is not required to disprove the entire prosecution case.

7. A two Judge bench of the Hon'ble Supreme Court in ***M.S. Narayana Menon alias Mani v. State of Kerala and Another*** 2006(6) ***SCC 39***, speaking through Justice S.B. Sinha, observed as follows:

"45. In Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 Supreme Court 1316], Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether burden of proof in terms of Section 118 had been discharged or not, relevant evidence cannot be permitted to be withheld. If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced might have gone unfavourable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the Act stating:

"...Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or preassumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

8. Adverting to the facts of the case, it transpires that the petitioner had taken the defence that the disputed cheque was issued as a security cheque. However, nothing has been brought to the fore to substantiate that claim. Even the agreements entered into by his firm-respondent No.3 does not specify the need for providing a security cheque. Furthermore, if the cheque was misused by the complainants, the petitioner ought to have taken action against them but no complaint to this effect has been moved by him.



9. Further, it was categorically agreed to by the petitioner, vide agreement dated 31.10.2013, that respondents No.1 and 2 shall provide the paddy for milling, that respondent No.3 would process into rice and supply to the FCI. A perusal of the record also shows that the petitioner had also requested for an extension to provide the quantity agreed upon, which was rejected by the government. As such, the petitioner has been unsuccessful in rebutting the presumption under Section 139 NI Act.

10. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned Courts below, which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is dismissed.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. A copy of this order be sent to learned Chief Judicial Magistrate, Ambala, through learned District & Sessions Judge, Ambala, for information and execution of order of sentence dated 11.10.2018 passed by learned Judicial Magistrate Ist Class, Ambala.

(HARPREET SINGH BRAR)
JUDGE

02.04.2025

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No