2025:PHHC:021289

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRR-2021-2008(O&M)

Date of Decision:-14.02.2025

Dharam Pal Sharma.

......Petitioner.

Vs.

Jai Singh & Anr.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Pawan Kumar Hooda, Advocate (Legal Aid Counsel) for the Petitioner.

Mr. Diwan S. Adlakha, Advocate for respondent no.1.

Mr. Dharam Pal, AAG Haryana.

***

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the judgment dated 12.07.2008 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhari whereby the appeal filed against the judgment of conviction and order of sentence dated 10/14.11.2006 passed by Judicial Magistrate Ist Class, Jagadhari has been dismissed.

2. The complaint in the present case came to be registered on 27.08.2005. The judgment of conviction was passed on 10/14.11.2006 by the Judicial Magistrate Ist Class, Jagadhari. The Appeal filed against the order of conviction was dismissed on 12.07.2008 by the Additional Sessions Judge, Yamuna Nagar at Jagadhari. The instant revision petition was filed on 15.09.2008 and has come up for final hearing now i.e. after a period of 19

years from the date of filing of the complaint.

3. The complainant filed brought the present complaint, alleging that the accused, in discharge of his existing liability, issued two cheques bearing No.065813 dated 15.7.2005 for a sum of Rs.1,00,000/- and No. 065814 dated 15.7.2005 for sum of Rs.50,000/-, drawn on Yamunanagar Central Co-operative Bank Ltd., Yamunanagar, in favour of the complainant, with the assurance that the same would be encashed on presentation. The complainant presented these cheques for encashment through his banker, on 19.7.2005, but the same were dishonoured and returned unpaid by the accused's bank with the remarks "Funds Insufficient vide memo dated 20.7.2005. Thereafter, the complainant through his counsel served a legal notice dated 30.7.2005 upon the accused asking him to make the payment of the amount of these cheques without 15 days from the receipt of that notice, but the accused did not comply with the same. Hence the complaint.

4. After recording the preliminary evidence adduced by the complainant and there being a prima facie case, the accused was ordered to be summoned to face trial for the commission of the offence punishable under section 138 of the Negotiable Instrument Act, vide order dated 08.10.2005.

5. Upon appearance, the accused was granted bail and being satisfied, he was served with a notice of accusation for commission of the offence punishable under section 138 of the Negotiable Instrument Act, vide order dated 8.4.2006. The accused pleaded not guilty and claimed trial.

6. In order to prove the allegations against the accused, the complainant examined the following witnesses and also exhibited documents:

PW1	Ranjit Singh, Head Cashier from State Bank of Patiala.
PW-2	Om Kumar Pundeer, Clerk from Yamunanagar Central Society Bank
PW-3	Jai Singh, complainant.

<u>EXHIBITED DOCUMENTS</u>:

Ex.C-1 & 2	Original Cheques
Ex.C-3 & 4	Receipt qua deposit of Cheques.
ExC-5	Photocopy of memo dated 20.07.2005
Ex.C-6	Copy of Legal Notice dated 30.07.2005
Ex.C-7 to 9	Postal Receipts
Ex.C-10	Receipt.
Ex.C-11 & 12	Acknowledgments
Ex.CW-1/A	Statement of Account of the complainant
Ex.CW-1/B	Authority Letter
Ex.CW-2/A	Copy of specimen signatures of the accused.
Ex.CW-2/B	Copy of cheque book issue register.
Ex.CW-2/C	Statement of account of the accused.
Ex.CW-2/D	Copy of cheque return register.
Ex.CW-2/E	Authority Letter.

7. Based on the evidence led, the accused/petitioner came to be convicted and sentenced by the Court of Judicial Magistrate Ist Class, Jagadhari vide judgment and order of sentence dated 10/14.11.2006 as under:-

Offence under Section	**Sentence RI/SI**	**Fine**	**RI/SI in default of payment of fine**
138 of Negotiable Instruments Act, 1881	RI for 01 Year	Rs.2,00,000/-	RI for 06 Months

Out of the aforesaid amount of fine of Rs.2,00,000/- an amount of Rs1,80,000/- was ordered to be paid as compensation to the complainant after the expiry of period of appeal/revision or as per the order of the Appellate Court.

8. The accused/petitioner preferred an appeal which was dismissed by the court of Additional Sessions Judge, Yamuna Nagar at Jagadhari vide judgment dated 12.07.2008.

9. The accused/petitioner has filed the instant revision petition impugning the aforementioned judgments.

10. During the pendency of the instant revision petition, the sentence of the accused/petitioner was suspended vide order dated 24.02.2009.

11. The counsel for the accused/petitioner contends that the orders of conviction and sentence passed by the courts below are not sustainable and deserve to be set aside. Both the courts below have wrongly brushed aside material discrepancies in the testimony of witnesses, which goes to the root of the matter and make the entire prosecution case doubtful.

Conviction has been recorded solely on the testimony of the complainant/respondent No.1 Jai Singh.

Both the courts below have failed to appreciate that there was no liability on the part of the accused towards the complainant so as to issue the cheques. In fact the cheques were retained by the complainant as security because there was a chit fund transaction between parties.

The complainant had joined the membership of a Chit fund and 20 monthly installments were to be paid by the complainant regularly to the accused and for that purpose only the complainant had retained the cheques as security. Both the courts below have failed to appreciate that the complainant in his statement during the cross examination while appearing as PW-3 admitted that he has neither maintained any record of whatever he paid to the accused as Chit Fund installments and nor he got any receipt of the same. The complainant with malafide intention presented the cheques in dispute and filed the complaint on false and frivolous allegations without there being any legally enforceable debt.

12. Both the courts below have placed reliance on Ex.C-10 by ignoring the fact that the said document was not duly proved by the complainant. The document did not bear any date and nor was it attested by

any authority. He thus contends that the impugned judgments are liable to be set aside.

13. The Counsel for the complainant on the other hand contends that the offence stands established beyond doubt. The accused has admitted his signatures on the cheques in question. Once the signatures have been admitted then a presumption arises that the cheques were issued in the discharge of legal liability. The accused has been unable to rebut that presumption. He, therefore, contends that the present petition is liable to be dismissed.

14. I have heard Counsel for the parties.

15. In order to prove his case the complainant examined himself as PW3 and deposed that he was a member of a Chit Fund Committee started by the accused and after completion of payment of the committee, the accused in discharge of his liability, issued the cheques Ex.Cl and ExC2 to him, which were presented for encashment by him vide deposit slips Ex.P3 and Ex.14 in his bank, but the same were returned back unpaid by the banker of the accused alongwith memo Ex C5. He deposed that he served a notice Ex.C-6 upon the accused through his counsel vide registered post the receipts being Ex.C7 to Ex.C9 and A.Ds. Ex.C11 and Ex.C12. He also tendered the receipt Ex C10 executed by the accused admitting his liability to pay the amount mentioned in the cheques.

16. The complainant examined PW-1 Ranjit Singh, Head Cashier from State Bank of Patiala, Jagadhri, who produced the summoned records and proved the copy of statement of account Ex.CW-1/B of the complainant alongwith authority letter Ex CW-1/A whereas PW-2 Om Kumar Pundeer, clerk from the Yamunanagar Central Co-op. Bank Ltd, Yamunanagar, who also produced the summoned records pertaining to the account of the

accused and proved the copy of his specimen signatures Ex.CW2/A, copy of cheque book issue register Ex.CW2/3, statement of account Ex.CW2/C, copy of cheque return register Ex. CW2/D and authority letter Ex.CW2/E.

17. The accused in defence his wife Smt. Bimla Devi, as DWI who deposed that in December, 2003, the complainant negotiated for a committee with her husband and obtained the cheques as security. She further deposed that complainant had to pay the installments of that committee for 20 months and thereafter, the amount of these cheques was to be realized, but the complainant neither paid the installments of the committee nor returned the cheques to her husband. However, her testimony cannot be relied upon, as admittedly, she is the wife of the accused and such evidence can be easily procured.

18. The accused has admitted that he has issued the cheques Ex.Cl and Ex.CZ in favour of the complainant. He has also admitted his signature on the receipt Ex.C10, whereas he denied all the facts stated in it i.e. receipt Ex.C10. PW3 Jai Singh, complainant admitted that cheques Ex.C-1 and Ex.C2 were issued in his favour by the accused as a security of the amount of the Chit Fund. The accused has not denied that he has not taken any money from the complainant Jai Singh, which means that the accused has issued the cheques Ex.C1 and Ex.C2 to discharge his financial liability. It is a settled law that once signatures on a cheque are admitted the presumption is that it was issued towards discharge of debt or liability as has been held in the judgment of ***K. N. Beena Vs. Maniyappan, 2001 (4) RCR (Criminal) 545***. It is also a well settled law that when a blank cheque is given towards liability or even as security, and when the liability is assessed and quantified, if the cheque is filled up and presented to bank the person who had drawn the cheque cannot avoid liability under section 138 of the Negotiable

Instrument Act as has been held in the case of ***APS Forex Services Pvt. Ltd. Vs. Shakti International Fashion Linkers & Ors. 2020(2) RCR (Criminal) 64, M/s Womb Laboratories Pvt. Ltd. Vs. Vijay Ahuja & Anr. 2019(4) RCR (Criminal) 354 and Bir Singh Vs. Mukesh Kumar 2019(2) RCR (Criminal) 1***. In the instant case the accused has failed to rebut the presumption that the cheques Ex.C1 and Ex.C2 were issued towards the discharge of a legally enforceable debt or liability.

19. The accused has failed to prove the fact that the cheques Ex C-1 and Ex.C-2 were got issued by the complainant under pressure. Therefore, as has been mentioned above, a presumption is drawn that the accused issued the cheques Ex.C1 and Ex. C2 in favour of the complainant, to discharge his financial liability. Once the signatures on the cheque are admitted, the burden to show that cheque was not issued for the discharge of a debt or liability lies upon the accused and he has not discharged that burden.

20. Keeping in view the above discussion, the offence stands established beyond doubt and therefore, finding no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

February 14, 2025
Vinay

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