

2025:PHHC:026112



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-3031-2009(O&M)

Date of Decision:-24.02.2025

Sube Singh.

.....Petitioner.

Vs.

Poonam Chand Ratti.

.....Respondent.

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

Present:- Mr. Rahul Vats, Advocate for the Petitioner.

Mr. Malkeet Singh, Advocate for the Respondent.

JASJIT SINGH BEDI, J.(ORAL)

The present revision petition has been filed impugning the judgment dated 05.11.2009 passed by Additional Sessions Judge, Fatehabad whereby the appeal filed against the judgment of conviction and order of sentence dated 27/28.02.2008 passed by Chief Judicial Magistrate, Fatehabad has been dismissed.

2. The complaint in the present case came to be registered on 24.12.2005. The judgment of conviction was passed on 27/28.02.2008 by the Chief Judicial Magistrate, Fatehabad. The instant revision was filed on 18.11.2009 and have come up for final hearing now i.e. after a period of 19 years from the date of filing of the complainant.

3. The brief facts of the case are that the accused in order to discharge his debut issued a cheque bearing No.186401 of UCO Bank,

Branch Fatehabad for an amount of Rs.95,000/- on 30.6.2005 with the assurance that the cheque if presented to the bank, would be encashed. The cheque was signed by the accused. The complainant presented the cheque issued by the accused for encashment in his account with the SBI Branch, Fatehabad and the same was sent to the UCO Bank for clearance. UCO Bank, Fatehabad returned back the cheque alongwith a memo dated 21.11.2005 with the remarks that there were insufficient funds in the account of the accused. The State Bank of India sent the original cheque and the memo of the UCO Bank to the complainant by post on 21.11.2005. Thereafter, the complainant got issued a notice of demand through his counsel on 28.11.2005 vide registered post calling upon the accused to pay the amount of Rs.95,000/-within 15 days, but the accused failed to pay the amount in question leading to the filing of the complaint.

4. After recording and considering the preliminary evidence produced by the complainant, the Trial Court summoned the accused to face Trial. On appearance of the accused, he was served with a notice of accusation under Section 138 of the Negotiable Instruments Act. He pleaded not guilty and claimed trial.

5. In order to prove his case, complainant Poonam Chand himself appeared as PWI and tendered in evidence cheque Ex.C-1, Memos Ex.C2 and Ex.C3, legal notice Ex.C4, postal receipt Ex.C5 and acknowledgement due Ex.C6.

6. The statement of the accused was recorded under Section 313 Cr.PC wherein he denied the allegations appearing against him in the evidence produced by the complainant and pleaded innocence.

7. Based on the evidence led, the accused came to be convicted and sentenced by the Chief Judicial Magistrate Fatehabad vide judgment and

order of sentence dated 27/28.02.2008 as under:-

Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
138 NI Act	1 Year	Rs.5000/-	RI for 03 Months

8. The accused/petitioner preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge, Fatehabad vide judgment dated 05.11.2009.

9. The aforementioned judgments are under challenge in the present petition.

10. During the pendency of the instant revision, the sentence of the accused/petitioner was suspended vide order dated 23.12.2009.

11. The learned Counsel for the accused/petitioner contends that there is no evidence of any legally enforceable debt and the cheque in question has been given as a security cheque. The case of the complainant was based upon the memo issued by UCO Bank, Fatehabad by which it is shown that insufficient amount was available in the account of the accused but the memo which is Ex.C2 did not describe in which account cheque Ex.C-1 had been presented. The memo Ex.C2 also did not show the cheque number. Memo Ex.C2 only showed insufficient amount but no cheque number nor account number was shown in that memo. Further, none of the officials of concerned banks were examined by the complainant in his evidence. Therefore, no opportunity was provided to the accused to cross examine the bank employees. Complainant Poonam Chand had admitted in his evidence that he did not know who had written the body of the cheque and also admitted that he did not write on the body of the cheque but he had only signed on the cheque.

12. The Counsel for the complainant on the other hand contends that once the execution of the cheque has been admitted it is presumed to

have been issued for the discharge of a legally enforceable debt. Though the said presumption is rebuttable the accused has not been able to rebut the same either by way of any defence evidence or by anything elicited during the cross examination of the complainant. Therefore, the offence stands established beyond doubt and the present petition is liable to be dismissed.

13. I have heard Counsel for the parties.

14. In the present complaint, it was incumbent upon the complainant to prove that the accused, in discharge of his existing liability issued the cheque dated 30.6.2005 for the amount of Rs.95,000/- drawn on UCO Bank in favour of the complainant which was dishonoured by the bank on the ground of insufficient funds. On serving a legal notice upon the complainant, he did not pay the amount of the cheque within the prescribed period. In order to prove this fact the complainant Poonam Chand, himself appeared as PWI and reiterated the allegations of the complaint by stating therein that the accused, in discharge of his existing liability issued a cheque of Rs.95,000/- Ex.C1 on 30.6.2005 by putting his signatures in his presence and when the cheque was presented to the State Bank of India for encashment on 21.11.2005 the same was sent to the bank of the accused for clearance. However, the same was dishonoured as there were insufficient funds in the account of the accused. He has also proved the memo of the UCO Bank, Ex.C2 and memo of State Bank of India, Ex.C3. He has further stated that he got issued the notice Ex.C4 through his counsel demanding the amount of the cheque. He has also proved the postal receipt Ex.C5 and acknowledgement due Ex.C6 and has stated that the accused failed to pay the amount despite notice and he had to file the present complaint.

15. After going through the material on record, it is apparent that the complainant PWI Poonam Chand has stated in no uncertain terms that

the accused had issued a cheque for Rs.95,000/- Ex.C1 in his favour and when the cheque was presented for encashment, the same was dishonoured by the banker of the accused. The accused failed to pay the amount in question despite legal notice. His testimony stands corroborated from the cheque Ex.C-1, memos Ex.C2 and Ex.C3, legal notice Ex.C.4, postal receipt Ex.C5 and acknowledgement due Ex.C6. The contention of the learned counsel for the accused that neither was there any existing debt or liability nor were the bank officials summoned to prove the records or the account of the accused making the case of the complainant doubtful, is devoid of any force. There is a presumption as to the existence of a legal liability if a cheque is signed and issued by a person unless the same is rebutted by the accused. However, the accused has failed to lead any evidence to rebut such presumption in favour of the existing debt or liability. The memos of the bank Ex.C-2 and Ex.C-3 were received by the complainant in due course of events as a part of the routine business of the bank and, therefore, a presumption of truth is attached to such transactions unless the same is rebutted as provided under Section 114 of the Indian Evidence Act.

16. In **Bir Singh Vs. Mukesh Kumar 2019(2) RCR (Criminal) 1**

the Hon' ble Supreme Court has held as under:-

“ 37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus

would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.”

17. In **Sri Dattatraya Vs. Sharanappa 2024 (3) RCR (Criminal)**

866 the Hon’ble Supreme Court has held as under:-

“ 21. In light of the aforesaid discussion, and as underscored by this Court recently in the decision of **Rajesh Jain v. Ajay Singh (2023) 10 SCC 148**, an accused may establish non-existence of a debt or liability either through conclusive evidence that the concerned cheque was not issued towards the presumed debt or liability, or through adduction of circumstantial evidence vide standard of preponderance of probabilities.

22. Since a presumption only enables the holder to show a prima facie case, it can only survive before a court of law subject to contrary not having been proved to the effect that a cheque or negotiable instrument was not issued for a consideration or for discharge of any existing or future debt or liability. In this backdrop, it is pertinent to make a reference to a decision of 3-Judge Bench in **Bir Singh v. Mukesh Kumar (2019) 4 SCC 197**, which went on to hold that if a signature on a blank cheque stands admitted to having been inscribed voluntarily, it is sufficient to trigger a presumption under Section [139](#) of the NI Act 1881, even if there is no admission to the effect of execution of entire contents in the cheque.”

18. A perusal of the aforementioned judgments would establish beyond doubt that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque has been issued for the payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any other person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid the penal proceedings under Section 138 would be attracted.

19. In the instant case, the memos of the bank Ex.C2 and Ex.C3 were received by the complainant in due course as per the routine business

of the bank and therefore, a presumption of truth is also attached to the said transactions unless the same are rebutted as provided under Section 114 of the Indian Evidence Act and the Negotiable Instrument Act. The accused has not summoned any employee from the bank to rebut the said presumption. No evidence has been led by the accused to show that the cheque return memo Ex.C2 is a forged or fabricated document and it does not bear the signature of bank officials. As far as statement of CW-1 is concerned, he has stated that the cheque was signed by the accused and this fact is sufficient to arrive at a conclusion that the cheque was issued by the accused. The ignorance of the complainant as to who has filled up the cheque is not material enough to give any benefit of doubt to the accused. Thus the accused has not been able to rebut the presumption under the Act that the cheque has been issued for the discharge of any debt or liability.

20. As far as the arguments of the counsel for the accused that the cheque was issued as a security is concerned, no evidence has been led by the accused to prove this fact and no evidence was brought on the file by cross-examination of complainant to arrive at a conclusion that the cheque was issued as a security. Therefore, the argument of the counsel for the accused is not tenable.

21. In view of the above discussion, I find no merit in the petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

February 24, 2025
Vinay

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