



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

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CRR-1017-2025 (O&M)
Date of decision: 19.05.2025

Harpreet Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amit Arora, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition is preferred against judgment dated judgment dated 04.03.2025 passed by learned Additional Session Judge, Tarn Taran whereby the judgment of conviction and order of sentence dated 09.04.2024 passed by learned Judicial Magistrate, First Class, Tarn Taran were upheld in the case stemming from criminal complaint No.590 dated 28.10.2021 under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter 'NI Act').

2. Succinctly, the facts, as alleged, are that the petitioner had taken a friendly loan from respondent No.2 for the purpose of joint business of cultivation of land measuring 50 killas, taken on lease along with business of sale purchase of landed property. Consequently, a sum of Rs.35,00,000/- was received by the petitioner from respondent No.2. In order to discharge the said debt, the petitioner issued a cheque



bearing No.000063 dated 31.08.2021 for Rs.35,00,000/-. The same was, however, dishonoured vide memo dated 03.09.2021 with the remarks- 'funds insufficient.' Since the amount due remained unpaid, in spite of serving legal notice dated 15.09.2021, complaint(*supra*) was instituted.

3. After assessing all material on record, the learned trial Court convicted the petitioner vide judgment dated 09.04.2024 and sentenced him to undergo rigorous imprisonment for 02 years as well as to compensate the complainant by paying Rs.35,00,000/-. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court which was dismissed.

4. Learned counsel for the petitioner, *inter alia*, contends that the learned Courts below have completely disregarded the fact that the respondent No.2 has neither been able to prove the source of paying such a huge amount in cash nor has been able to prove on record that it is legal debt. Further, the petitioner while stepping into witness box clearly rebut the presumption raised under Sections 118 and 139 of the Act by taking the categorical stand that the said cheque was not issued by the petitioner in the discharge of any legal debt. Furthermore, the petitioner has already settled the matter with the respondent bank and has already paid the entire outstanding amount and the bank has already issued no objection certificate to the petitioner.

5. Per contra, learned State counsel opposes the prayer made by learned counsel for the petitioner and submits that he has been



convicted by the learned Courts below on correct appreciation of the facts and the law, as such interference by this Court is not warranted.

6. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, a study of Sections 118 and 139 of the NI Act is 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;

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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.

7. 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 her defence. The accused is only required to raise a probable defence casting a doubt on the existence of consideration which she can do by adducing direct evidence, circumstantial evidence or even on the basis of presumptions of law or fact. Furthermore, if she can explain the circumstances that would



indicate her 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, she is not required to disprove the entire prosecution case.

8. 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."

9. Adverting to the facts of the case, it transpires that the petitioner had taken the defence that the disputed cheque was not issued by her in discharge of any legal debt. However, nothing has been brought to the fore to substantiate that claim.



10. The petitioner has asserted her innocence and claimed that she has been falsely implicated in the present matter. However, she has failed to provide any cogent reason or plausible explanation as to why respondent No.2 would falsely implicate her. Moreover, she has failed to offer any credible explanation as to how her signatures came to be affixed on the cheque in question. As such, the petitioner has been unsuccessful in rebutting the presumption under Section 139 NI Act.
11. 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 warrant interference by this Court. As such, there is no merit in the present revision petition and the same is dismissed.
12. Learned Chief Judicial Magistrate, concerned is directed to execute the order of sentence dated 09.04.2024.
13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

19.05.2025
yakub

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