

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2488-2012 (O&M)

Reserved on 18.11.2024

Date of pronouncement 13.01.2025

Dharam Nath

... Petitioner

VS.

Krishan Kumar

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Manan Bhardwaj, Advocate – amicus curiae

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment/order dated 08.05.2009 passed by Special JMIC, Bathinda and judgment and order dated 01.08.2011 passed by Sessions Judge, Bathinda vide which the petitioner-accused was convicted in a complaint filed by the respondent under Section 138 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) read with Section 420 IPC.

(2). In the complaint it was alleged that the petitioner-accused borrowed a loan of Rs.80,000/- in cash on 15.6.2005 from the respondent-complainant at Bathinda for domestic purpose with the stipulation that he would pay back the loan amount with interest at the rate of 2% per month. After having received the said loan amount, the petitioner-accused executed pronote and receipt dated 15.6.2005 and signed the said pronote. The petitioner-accused in discharge of his partial liability issued cheque No.137283 dated 19.5.2006 for Rs.50,000/- in favour of the respondent-complainant drawn from his account No.10061 in Canara Bank, Mall Road, Bathinda under his signature. The petitioner-accused assured the respondent-complainant that the said cheque will be honoured and when he presented it for encashment before the Bank, the same was returned with remarks

“insufficient funds” which led to filing of the present complaint after having served legal notice upon the petitioner-accused.

(3). Before the trial court, it was the case of the respondent-complainant that the cheque has been duly signed by the petitioner which was issued by him in discharge of his partial liability and no reply has been given to the legal notice and since the issuer of the cheque has admitted his signature, the debt is legally enforceable. As against it, learned counsel for the petitioner contended that he had never borrowed any amount from the respondent and its nothing more than false implication inasmuch as the pronote or receipt of consideration has not been proved.

(4). Learned trial court observed that simple denial by the petitioner-accused is not sufficient as he ought to have proved that there was no debt or liability and since no defence evidence has been produced by the petitioner, therefore he is guilty under Section 138 of the NI Act and as such was convicted and sentenced to undergone RI for six months with fine of Rs.4000/-.

(5). The petitioner filed appeal before the Sessions Court wherein the ground taken was that the trial court failed to consider the provisions of Section 142 and 145 of the NI Act and Section 200 of the CrPC and not even properly appreciated the evidence and as such no legal liability can be fastened upon the petitioner and dismissed the appeal vide judgment dated 01.08.2011.

(6). Since there was consecutive non-representation on behalf of the petitioner as well as the respondent, this Court vide order dated 22.03.2024 appointed Mr. Manan Bhardwaj, Advocate as amicus curiae to assist this Court.

(7). Mr. Bhardwaj submits that in this case, no original pronote was executed nor it was shown or proved before the trial court by the parties. He

further submits that both the courts below are silent on the point as to why against the debt liability of Rs.80,000/-, a cheque of Rs.50,000/- was given to the respondent and in case the assertion of the respondent is accepted on its face value, there is no endorsement on the cheque specifying thereon that the same is being issued in discharge of partial debt liability of the petitioner which also casts aspersion on the case of the respondent.

(8). Learned amicus curiae placed reliance on **Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578**, to contend that under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque and when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act and that such cheque cannot be presented for encashment without recording the part-payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

(9). He further averred that before the trial court both the parties failed to produce on record any receipt of loan amount given by the respondent to the petitioner and since the cheque itself has been disputed by the petitioner, no handwriting expert was examined or was the cheque in question was subjected to forensic examination.

(10). After hearing learned amicus curiae and going through the record in hand as well as considering the averments made in the petition, this Court is of the considered view that there is no legal infirmity or perversity in the judgments

passed by both the courts below. The appellate court while determining as to whether ingredients of Section 138 of NI Act are proved by the respondent against the petitioner, observed as under:-

“The complainant has been able to prove his case on the ground that pronote Mark A and receipt Mark A1 is brought on record by the complainant. Accused asked a question during the cross-examination and complainant stated that original pronote and receipt are in his possession and at that stage accused could ask the complainant or request the Court to get produced original pronote and receipt on record. The cheque was issued and there is a presumption of Section 118 of the Negotiable Instrument Act that this is for a valid consideration. This cheque was presented and dishonoured due to insufficient funds and memo of the bank Ex.C2 is on record. As per this memo, the cheque was returned back due to funds insufficient. The legal notice was issued to demand the amount and copy of same is Ex.C4 and postal receipt is Ex.C5. The accused did not make the payment within time of 15 days. The postal acknowledgment is Ex.C6, which was received on behalf of accused by one Manoj Kumar. This acknowledgment is dated 1.6.2006. So, the learned Trial Court has rightly appreciated the evidence on record and held that the accused committed the offence as provided under Section 138 of the Negotiable Instrument Act.

13. So, from the above said discussion and findings, there is no illegality or infirmity in the judgment and order of conviction of the learned Trial Court and hence, this appeal stands dismissed. A copy of this judgment be sent to the Learned Trial Court for compliance. Record of learned Trial Court be sent back. File of this appeal be consigned to record room.”

(11). The petitioner cannot be allowed to take technical objection that no original pronote/receipt has been produced inasmuch as it has come in the cross-examination of the respondent that the original pronote/receipt is in his possession and shall be produced as and when it is demanded. That apart, when issuance of

the cheque duly signed has been admitted by the petitioner, he cannot escape from legally enforceable debt. Petitioner’s simple denial is not sufficient as he must prove that there was no debt or liability, for, there is a presumption specified under Section 139 of the NI Act in favor of the holder of the cheque, which implies that the cheque was issued for the discharge of a legally enforceable debt or liability. In order to effectively rebut the presumption, the accused should present facts and circumstances that make it probable that no debt existed which does not require proof beyond a reasonable doubt but rather a demonstration that it is plausible enough to shift the burden back to the complainant. Moreover, the petitioner has not come forward with cogent evidence in his defence or to rebut the categoric finding returned by both the Courts below.

(12). In opinion of this Court, no patent illegality, perversity or impropriety is made out in the concurrent finding of conviction by both the courts below and thus, no interference in concurrent finding of conviction of petitioner for offence punishable under Section 138 of the NI Act and sentence imposed, is called for in exercise of revisional jurisdiction.

(13). Dismissed

_____.01.2025
V.Vishal

(Sandeep Moudgil)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No