2025:PHHC:059739

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

288

CRR No. 3601 of 2013 (O&M)
Date of decision: 07.05.2025

Tilak Raj **...Petitioner**

Versus

Charanjit Singh **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Aarti, Advocate
for the petitioner.

None for the respondent.

MANISHA BATRA, J. *(Oral)*

1. The present revision petition has been filed against the judgment of conviction and order on quantum of sentence, both dated 26.07.2011, passed by the Court of learned Judicial Magistrate First Class, Patiala in complaint bearing No. 4686-T of 2005, titled as ***Charanjit Singh vs Tilak Raj.***, filed under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'the Act')*, whereby the petitioner was held guilty for commission of offence punishable under the aforesaid section. The petitioner has also laid challenge to the judgment dated 06.07.2013, passed by the Court of learned Additional Sessions Judge, Patiala, whereby the appeal of the petitioner had been dismissed.

2. For the sake of coherence and continuity, the parties hereinafter shall be referred to as per their original nomenclature given during trial.

3. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned complaint was filed by the complainant on the allegations that the accused had entered into an agreement to sell 18 Biswas of

2025:PHHC:059739

land to one Joga Singh. Written agreement was executed on 05.06.2023. Out of this land, he owned 14 Biswas and remaining 04 Biswas were owned by one Panna Gir. The accused had received an amount of Rs. 10 Lakhs as earnest money from the complainant on 05.06.2023 and executed a power of attorney in favour of the complainant and Joga Singh for 14 Biswas of land and had taken responsibility for getting the sale deed executed for 04 Biswas of land as well. He failed to get the same transferred from Panna Gir in favour of the complainant. When the complainant insisted for return of his earnest money qua that piece of land, the accused issued a check for a sum of Rs. 2,40,000/-. The said cheque, when presented before his banker by the complainant, was returned unpaid with the remarks "Insufficient funds" on 29.12.2004. On asking of the accused, the said cheque was again presented on 27.01.2005 and was again dishonoured. The accused failed to make payment of the amount of cheque and despite issuance of notice, thereby compelling the complainant to file the said complaint.

4. After considering the preliminary evidence, the learned trial Court summoned the accused for commission of offence punishable under section 138 of the Act. On his appearance, notice of accusation was served upon him. He pleaded not guilty to the notice and claimed trial.

5. To substantiate his case, the complainant examined himself as CW-1 and produced three more witnesses, besides placing reliance upon certain documents and thereafter closed his evidence.

6. The statement of the accused was recorded under section 313 of Cr.P.C., wherein he abjured his guilt and claimed himself to be innocent. He submitted that the documents in the shape of agreement to sell were forged

2025:PHHC:059739

documents and no cheque had been issued by him for discharge of his legal liability. No defence evidence had been adduced.

7. After hearing the arguments advance by both the sides and appraising the evidence produced on record, the learned trial Court held the accused guilty for commission of offence punishable under Section 138 of the Act and sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs. 10,000/-. In default of payment of fine, he was further sentenced to undergo simple imprisonment for one month. Feeling aggrieved, the accused filed an appeal which was dismissed by the appellant Court, vide judgment dated 06.07.2013 and dissatisfied with the same, the present revision petition has been filed.

8. It is argued by learned counsel for the petitioner/accused that the findings given in the impugned judgments as delivered by the Courts below are not sustainable in the eyes of law as while giving these findings, the learned Courts below ignored the fact that it had not been proved on record that any agreement, legally admissible in evidence, had been executed by the accused. The accused was admittedly not the owner of the particular piece of land qua which the agreement was allegedly executed. The cheque in question even if proved to have been given by the accused was nothing but a cheque for security to ensure that amount shall be repaid in case of Panna Gir not executing the sale deed qua 04 Biswas of land in favour of the complainant. Even otherwise, it was proved that the cheque in question was given by him to the respondent at police station and it was forcibly taken and was not voluntarily issued by him. The evidence produced on record had not been properly appreciated. There was no legally enforceable debt as against the

accused which he was liable to discharge by way of issuance of cheque in question. The Learned trial Court and appellate Court did not apply their judicious mind. Non-speaking, cryptic and perverse orders have been passed by them. With these broad submissions, it is argued that the impugned judgments are liable to be set aside, the petition deserves to be accepted and the petitioner deserves to be acquitted of the allegations qua commission of offence punishable under Section 138 of the Act.

9. The respondent initially appeared through his counsel but subsequently none has appeared on his behalf.

10. The contentions as raised by learned counsel for the petitioner have been given due deliberations.

11. At the very outset, it may be mentioned that there are concurrent findings of conviction arrived at by two Courts and the petitioner has approached this Court to exercise its revisional jurisdiction. It is well settled that in criminal revisions against conviction, this Court is not supposed to exercise the jurisdiction like appellate Court and the scope of interference in the revision is extremely low. Section 438 of Bharatiya Nagarik Su*raksha Sanhita, 2023 (which is pari materia with Section 397 of Cr.P.C.)* vests jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of inferior Court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. While considering the question as to whether there is a patent defect or an error of jurisdiction or law, the revisional Court is not required to dwell at

length upon the facts and evidence of the case to reverse those findings. Reference in this regard can be had to the observations made by Hon'ble Supreme Court in ***State of Gujarat vs. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294***, wherein it was held so. The well accepted norm is that a revisional jurisdiction of higher Court is very limited one and cannot be exercised in a routine manner and it should not lead to injustice *ex-facie*. In view of this position of law, it is to be seen as to whether a case for exercise of revisional jurisdiction is made out or not?

12. Before proceeding further, it would be apposite to reproduce the statutory provisions contained in Section 138 of the N. I. Act, which are relevant for the purpose and which read as follows:

> **<u>138. Dishonour of cheque for insufficiency, etc., of funds in the account</u>**.- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless –

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. - For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

13. Further, as per scheme of the Act, once the accused admits signatures on the cheque in question, certain presumptions are to be drawn, which result in shifting the onus. Section 118(a) of the Act lays down a presumption that every negotiable instrument was made or drawn for consideration. Another presumption is enumerated in Section 139 of the Act, as per which, the holder of the cheque received it for the discharge, in whole or in part, of any debt or other liability. A combined effect of these provisions is a presumption that the cheques were drawn for consideration and given by the accused for the discharge of debt or liability. In ***Rangappa vs. Sri Mohan, (2010) 11 SCC 441***, Hon'ble Supreme Court had laid down principles pertaining to the presumptions and the onus of proof, which are summarized as under:

(i) Once the execution of the cheque is admitted, Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of the preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposes an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come into the witness box to support his defence.

14. The case as set up by the respondent/complainant is that an agreement for 18 Biswas of land had been executed by the accused in his favour. Out of the said land, 14 Biswas of land were owned by him, whereas 04 Biswas of land was owned by one Panna Gir and the accused had undertaken to get the sale deed executed qua that land also and had received earnest money qua 18 Biswas of land. As per the allegations, since the accused had not been able to get the sale deed qua 04 Biswas of land executed in favour of the complainant, therefore, to discharge his liability to pay back the amount of Rs. 2,40,000/-, which was taken by him by way of earnest money for getting the sale deed executed qua 04 Biswas of land, he had issued the cheque in question in favour of the complainant and the same had been dishonoured. Though in his statement recorded under Section 313 of Cr.P.C., the accused denied issuance of any cheque in favour of the complainant,

however, while cross-examining the complainant before the learned trial Court, a contradictory stand had been taken and suggestion was given to him that the cheque in was given by him to the complainant for the purpose of security as a compromise had taken place between the parties 2-3 days prior to issuance of cheuqe and it was agreed that if the land, as mentioned in the agreement, was not sold to the complainant, then he had a right to present the cheque. This suggestion was admitted to be correct by the complainant. The accused did not deny his signatures on the cheque in question, though a stand that the agreement Ex. C-1 was a forged document had been taken but with regard to cheque in question, no such plea had been taken. As such, in the considered opinion of this Court, the learned Courts below had rightly observed that the execution of the cheque in question by the accused had been duly proved.

15. Further, as already mentioned, the accused himself suggested to the complainant that the cheque in question was a security cheque. With regard to a security cheque, the sell settled proposition of law is that if on the date of issuance of a cheque, liability of debt exists or the amount has become legally recoverable, Section 138 of the Act is attracted since such cheque represents outstanding liability. If on the date of cheque, there is debt or liability, the cheque even issued as a security cheque attracts Section 138 of the Act. Reliance in this regard can be placed upon ***Sripati Singh (since deceased) Through his Son Gaurav Singh vs. The State of Jharkhand & another : Livelaw 2021 SC 606***, wherein it was observed by Hon'ble Supreme Court that a cheque if issued as a security to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true

sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It was observed that if it is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound, such cheque matures for presentation and its drawee is entitled to present the same. On its presentation, if the same is dishonoured, the consequences contemplated under Section 138 of the N. I. Act and the other provisions of N.I. Act would follow.

16. It was further observed by Hon'ble Supreme Court in the above-cited case that if a cheque is issued and is treated as 'security' towards repayment of an amount within a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. However, when a cheque is issued even though as 'security', the consequences flowing therefrom are also known to the drawer of the cheque and if such cheque is presented and dishonoured, the holder of the cheque would have the option of initiating the civil proceedings for recovery or the criminal proceedings.

17. On applying the above discussed position of law to the peculiar facts of the present case, it is observed that since the stand taken by the accused himself was that the cheque in question was given by way of a security and since as per terms of the agreement Ex. C-1, the accused had

undertaken to execute the sale deed qua 04 Biswas of land in favour of the complainant and otherwise, to pay back the amount of earnest money pertaining to that piece of land, but no sale deed had been executed and registered in favour of the complainant as on the date of issuance of the cheque, therefore, the amount as agreed is presumed to have matured and, therefore, the amount as mentioned in the cheque had also become due and payable. So far as the execution of agreement Ex. C-1 is concerned, the complainant not only examined marginal witnesses but also a handwriting and finger print expert who submitted a detailed report. Credibility of his statement could not be shaken and accused did produce any evidence contrary to the same to prove that agreement Ex. C-1 was a forged document. Even otherwise, there is a legal presumption under Section 139 of the Act in favour of the complainant of issuance of cheque by the accused from his bank account and the onus was on the accused to show as to for what purpose the cheque had been issued. Dishonour of a cheque issued for discharge of a liability which accrued later on due to non-execution of sale deed in favour of the complainant is certainly covered by the statute in question since on the date of the cheque, there was a liability in presenti against the accused. By taking the plea that the cheque was a security cheque, the accused acknowledged his liability that the cheque holder might use the security as an alternative mode for discharge of his liability. As such, the argument that on dishonour of cheque, no offence under Section 138 of the Act was made out, is certainly liable to be rejected.

18. In view of the above discussion, it emerges that since the factum of issuance of cheque as well as the signatures on the same had not been

denied by the petitioner, therefore, the presumption under Section 139 of the Act would automatically come into being. The burden lied heavily upon the petitioner to disprove the cheque or existence of any legally recoverable debt or liability, which he has failed to discharge. As such, no fault can be found in the findings as recorded by the learned trial Court as well as by learned appellate Court, which are well reasoned and do not warrant any interference. Accordingly, finding no merit in the present revision petition, the same is dismissed.

19. Let a copy of this order along with trial Court's record be sent to the learned trial Court for the purpose of initiating appropriate action against the petitioner for receiving the remaining part of the sentence as awarded by the learned trial Court

07.05.2025 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes*

Whether reportable *Yes*