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

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CRR No. 1071 of 2024 (O&M)
Date of decision: 25.04.2025

Lucky Kumar **...Petitioner**

Versus

Sushma Arya **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. D. S. Malwai, Advocate
for the petitioner.

None for respondent No. 1/complainant.

Mr. Manish Bansal, PP, U.T., Chandigarh and
Mr. Vaibhav Mittal, APP, U.T., Chandigarh.

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 02.12.2017, passed by the Court of learned Judicial Magistrate First Class, Chandigarh in complaint bearing No. 119 of 2016, titled as ***Sushma Arya vs. Lucky Kumar***, 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 and was sentenced to undergo rigorous imprisonment for a period of two years and to pay compensation equivalent to cheque amount i.e. Rs. 16,00,000/-. The petitioner has also laid challenge to the judgment dated 23.08.2023, passed by the Court of learned Additional Sessions Judge, Chandigarh, 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 had been filed by complainant Sushma Arya on the allegations that accused Lucky Kumar, who was acquainted with her, had entered into an agreement regarding transaction of money of loan with her on 10.10.2012 and had borrowed an amount of Rs. 10,50,000/- from her on 27.04.2012 and had agreed to return the same by 27.04.2013. He had also executed an agreement in this regard with her on 10.10.2012. He failed to pay the loan amount within the stipulated time and on repeated requests of the complainant and to discharge his legally enforceable liability, had issued a cheque for a sum of Rs. 16,00,000/- on 06.02.2015, which included principal and interest amount, in her favour. The said cheque was presented for encashment but was received back unpaid with the remarks 'Exceeds Arrangements" and was dishonoured. Legal notice was served by the accused but still he failed to make the payment, thereby compelling the complainant to file the aforementioned complaint.

4. On the basis of the preliminary evidence produced before it, the learned trial Court observed that a *prima facie* case for commission of offence punishable under Section 138 of the N. I. Act had been made out against the accused for summoning him as an accused and issued process. The accused pleaded not guilty to the notice and claimed trial.

5. In order to prove her case, the complainant herself stepped into the witness box as CW-1 and produced documentary evidence. She also examined one witness and concluded her evidence.

6. Statement of the accused under Section 313 of Cr.P.C. was recorded, wherein he abjured his guilt and claimed to be innocent. However, no defence evidence had been adduced by him.

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7. After appraising the evidence produced on record and hearing the contentions raised by both the sides, the learned trial Court held the accused guilty for commission of offence punishable under Section 138 of the Act and sentenced him in the manner as indicated above. Feeling aggrieved, the accused filed an appeal before the learned appellate Court, which too was dismissed, vide impugned judgment dated 23.08.2023. Dissatisfied with the same, the present petition has been filed.

8. It is argued by learned counsel for the petitioner/accused that the impugned judgments as passed by the Courts below are liable to be set aside as the findings given therein are not sustainable in the eyes of law and are liable to be quashed in view of the fact that the evidence produced on record had not been properly appreciated and cryptic and non-speaking orders had been passed. The learned trial Court as well as the learned appellate Court failed to consider the fact that as per her own version, the complainant had advanced an amount of Rs. 10,50,000/- to him but the cheque was for an amount of Rs.16,00,000/-, which was much more than the amount which was allegedly due to be payable by him. There was no pleading in the complaint with regard to terms of the agreement dated 10.12.2012. 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 charge framed against him under Section 138 of the Act, for which he had been held guilty.

9. It will not be out of place to mention here that though respondent No.1/complainant had initially appeared through her counsel before this Court but has failed to appear subsequently.

10. The contentions as raised by learned counsel for the

petitioner/accused 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 this 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*. Taking into consideration the above discussed position of law, it is to be seen as to whether the interference by this Court in the impugned orders is called for or not?

12. It may be mentioned that for the purpose of Section 138 of Act, the following ingredients are required to be fulfilled:

(i) A cheque is drawn for the payment of any amount of money to another person;

(ii) The cheque is drawn for the discharge of the 'whole or part' of any debt or other liability. 'Debt or other liability' means legally enforceable debt or other liability; and

(iii) The cheque is returned by the bank unpaid because of insufficient funds.

13. It is also relevant to refer to the proviso of Section 138 of the Act that reads as under:

"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, 5 [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 of other liability" means a legally enforceable debt or other liability.

14. 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.

15. It is worth mentioning that the presumptions raised under Sections 118(a) and 139 of the Act are rebuttable presumptions. A reverse onus is cast on the accused, who has to establish a probable defence on the standard of preponderance of probabilities to prove that either there was no legally enforceable debt or other liability. The core issue in the instant case is as to

whether the accused is proved to have committed the offence under Section 138 of the Act or not? While recording his statement under Section 313 of Cr.P.C., the accused did not dispute his signatures on the cheque in question as well as the fact that this cheque was relating to him. He took a plea that this was a blank signed cheque procured by the complainant from him at the time of giving an amount of Rs. 1 Lakh as loan. He also set up a plea that six blank signed cheques and some blank papers were also procured by the complainant from him. Once the accused admitted his signatures on the cheque in question, the presumption under Section 118(a) of the Act had come into operation and it was to be considered that this cheque was made or drawn for consideration and was issued in discharge of a legally enforceable liability. The reverse burden shifted on the accused to prove that it was not issued for discharge of any debt. The accused, however, had failed to produce any evidence in his defence to prove so. The statement as recorded under Section 313 of Cr.P.C. that blank signed cheques in lieu of loan amount of Rs. 1 Lakh had been taken from him, cannot be considered as substantive evidence of defence. The accused, therefore, failed to prove any material on record to rebut the presumption raised against him under Sections 118(a) and 139 of the Act. On the contrary, the complainant has been able to prove all the ingredients of offence under Section 138 of the Act beyond doubt. As such, this Court, while exercising its revisional jurisdiction, is not inclined to hold that any ground for interference with the impugned judgments has been made out. Rather, the Courts below had rightly held that all the ingredients of Section 138 of the Act were established in this case.

16. So far as the order of the learned trial Court of awarding compensation of a sum of Rs. 16,00,000/- is concerned, it may be stated that

the object of the Act is not only punitive but also compensatory and restitutive. The provisions of the Act envision a single window for criminal liability for the dishonour of a cheque as well as civil liability for the realization of the cheque amount. There needs to be a consistent approach towards awarding compensation and unless there exist special circumstances, the Court can levy fine or direct payment of compensation by the accused. The amount of compensation cannot be said to be excessive and, therefore, no interference is required in the judgments passed by the Courts below on this point as well.

16. No other point was urged.

17. In view of the discussion made above, the present petition fails and the same is dismissed. Records of the learned Courts below be sent back forthwith.

18. 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. A copy of this order be also sent to Jail Superintendent concerned.

25.04.2025 **(MANISHA BATRA)**

Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*