IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.3532 of 2017
Date of Decision: *September 4th, 2025*

Ramesh Chand

..... PETITIONER(S)

VERSUS

Rajiv Java

..... RESPONDENT(S)

CORAM: **HON'BLE MR. JUSTICE SUBHAS MEHLA**

PRESENT: - None for the parties.

SUBHAS MEHLA, J

This revision petition has been preferred by the petitioner challenging the judgments of conviction and order of sentence passed by the Courts below.

2. Succinctly, respondent-Rajeev Jawa filed a complaint under Section 138, 141, 142 of the Negotiable Instruments Act, 1881 (for short, 'NI Act') against the petitioner alleging that petitioner took a friendly loan of ₹ 12,00,000 from him on 15.06.2011. The petitioner issued a cheque bearing No.107137 dated 29.08.2014 in discharge of his liability, which on presentation to bank, was returned with the remarks 'Insufficient Funds'. The petitioner was served a legal notice dated 04.10.2014 but he failed to make the payment.

3. On appreciating the evidence on record and after hearing learned counsel for the parties, the learned trial Court held that the complainant sufficiently proved on record that cheque in question was issued by the petitioner in favour of the complainant to discharge an existing legally enforceable liability. Accordingly, the petitioner was held guilty and convicted for commission of offence punishable under Section 138 of NI Act vide judgment dated 06.08.2016 and was sentenced to simple imprisonment vide order dated 09.08.2016 for a period of six months under Section 138 of NI Act. Additionally, he was ordered to pay an amount of ₹ 13,50,000 to the complainant so as to compensate him, to be paid within one month.

4. Aggrieved by the aforesaid judgment of conviction and order of sentence, petitioner filed an appeal before the Additional Sessions Judge, Gurugram. The appellate Court reappreciated the evidence and after hearing learned counsel for the parties, affirmed the findings recorded by the trial Court and dismissed the appeal.

5. Now, petitioner has filed the present revision petition assailing the aforesaid judgments of conviction and order of sentence.

6. There was no appearance on behalf of the petitioner. Even on 13.12.2022 and 10.03.2023 also, no one had put in appearance on his behalf, and Registry was also directed to inform leaned counsel for the petitioner about the next date of hearing. Now-a-days, every case is listed in CIS system. Registry also sent notices to counsel as well as parties and they can very well track their cases fixed before this Court. Sentence of the petitioner was suspended by this Court vide order dated 07.11.2017. It seems that the petitioner is not interested in pursuing this petition. Be that as it may, the petition is taken up for disposal on merits.

7. It has been pleaded in the petition that judgments passed by both the courts below are against facts on record and law applicable thereto. The petitioner and complainant were well known to each other and were in business on property dealings. There were about 40/42 blank signed cheques in the office of the complainant without knowledge of the petitioner. The complainant presented the cheques to bank, without the information and knowledge of the petitioner, which were returned with the remarks 'Insufficient Funds'. After issuance of legal notice, nine complaints against the petitioner and his nephew Pardeep were filed, out of which four got dismissed on the ground of source of income, non producing of ITR and a huge amount of ₹ 50 lac was involved which was allegedly given by the complainant on the same date. The courts below ignored the facts that as per the alleged complaint, loan was advanced on 15.06.2011 and cheque in question

pertains to 29.08.2014. The alleged legal notice does not mention the date on which loan was advanced to the petitioner, while in complaint, complainant has mentioned the date as 15.06.2011. In cross-examination, the complainant did not mention any date, and only years were mentioned. It was also stated by complainant that the loan was given in presence of his wife, who was never examined. As per cross-examination of the complainant, his income in the year 2011 was ₹ 1.5 lac whereas he was filing ITR of ₹ 3.5 lac to ₹ 4 lc. So, he would not have advanced a loan of ₹ 25 lac to 30 lac to the petitioner in the year 2011. The intention of the respondent was only to cheat and harass the petitioner.

8. The appellate Court has considered all the pleas taken by the petitioner in this petition. The petitioner was examined as DW-1 and he admitted the issuance of cheque(s) and his signatures. The petitioner tried to deny the liability but he failed to discharge the burden which is required under law. Mere denial is not acceptable. A negotiable instrument, which includes a cheque carries the presumption of consideration under sections 118 (a) and 139 of the N.I. Act . It is profitable to extract the said relevant provisions:

> "**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, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;
>
> **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."

It is mandatory under Sections 118 (a) and 139 of the Act that once a cheque is issued and dishonoured, the burden shifts to the accused to rebut the presumption of consideration. The presumption is rebuttable, and the accused must raise a probable defence, which may include evidence or reliance on the complainant's materials. Mere denial of the accused is insufficient to discharge the presumption.

9. Referring the case of **Bir Singh vs. Mukesh Kumar**, **(2019) 4 SCC 197**, *even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.* As per provisions of Sections 138 and 139 of the Act, once the complainant proves the execution of the cheque and also proves on record that there was an existing liability against the accused, the Court is to legally presume that the cheque was issued by the accused against a legal liability. Though, petitioner admitted that cheque was signed by him wherein the name and date was filled by the complainant but he failed to given any plausible explanation that why he gave a blank cheque of ₹ 12 lac to the complainant. The petitioner submitted that some business transactions regarding property dealing were exchanged between him and the complainant due to which he issued 40 to 42 cheques, but he could specify even a single transaction regarding any specific property which might have taken place between him and the complainant. The petitioner admitted the fact that he did not take any legal action against the complainant regarding misuse of the cheques given by him to the complainant. It is surprising and appealing that a person could give bulk of signed cheques to any person without any consideration. Thus, in the light of aforesaid discussion, it can safely be held that the courts below had not erred in holding the petitioner to be guilty of offence under Section 138 of the Act and rightly convicted and sentenced the petitioner as detailed above.

10. The revisional jurisdiction of the Court can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial Court or the inferior Court, as the case may be. The jurisdiction under Section 397 Cr.P.C.

is a very limited one. The legality, propriety or correction of an order passed by a Court is the very foundation of exercise of jurisdiction under Section 397 Cr.P.C. but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. The above observation has been derived from **Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460**.

11. This Court does not find any merit in the petition which has not even been pursued by the petitioner in the right perspective.

12. Dismissed.

13. A copy of this order be sent to concerned trial Court/Chief Judicial Magistrate, for compliance and appropriate action in accordance with law.

(SUBHAS MEHLA)
Judge

September 4th, 2025
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No