IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CRR-1252-2025 (O&M)
DATE OF DECISION: 19.08.2025

JEET SINGH

……..PETITIONER

Versus

GULIAQAT SINGH AND ANR

……..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Brar, Advocate
for the petitioner

Mr. J.S. Rattu, DAG, Punjab

SANDEEP MOUDGIL, J

1. **Prayer**

The present revision has been filed against the judgment dated 28.10.2017, passed by Sub Divisional Judicial Magistrate, Jalalabad (West), vide which the petitioner/accused was convicted under Section 138 of the Negotiable Instruments Act, 1881 (in short N.I Act) to undergo Rigorous Imprisonment for one year and six months and further ordered to pay compensation equivalent of Rs. 2,50,000/- and the impugned judgement dated 02.04.2025 passed by Addl. Sessions Judge, Fazilka vide which appeal by petitioner against the same was dismissed.

2. **Contentions**

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present matter, and this crucial aspect has not been adequately appreciated by the courts below. It is further submitted that the respondent no. 1 lacked the financial capacity to extend the alleged loan to the petitioner, thereby casting serious doubt on the existence of any legally enforceable debt or liability. Consequently, the issuance of the cheque in question, purportedly in discharge of such a liability, is rendered highly questionable and deserves legal scrutiny. The petitioner asserts that the circumstances surrounding the transaction raise significant concerns regarding its genuineness and veracity, which have not been properly considered during the proceedings before the courts below.

Per contra, learned counsel for the State vehemently opposes the contentions raised on behalf of the petitioner and submits that the present revision petition is frivolous and misconceived, amounting to a gross misuse of the process of law. It is argued that the courts below have rendered well-reasoned and concurrent findings of fact, after duly appreciating the evidence placed on record, and there is no illegality or perversity in the impugned judgments warranting interference by this Court.

It is further submitted that the cheque in question was admittedly issued by the petitioner in favour of the respondent no. 1 and bears his signatures and was subsequently dishonoured due to insufficiency of funds and thereafter, upon issuance of a legal notice under Section 138 of the NI Act, on 16.05.2016, the petitioner was called upon to make the payment whereby, the he failed to comply.

The counsel further asserts that the defence raised by the petitioner regarding the respondent no. 1's financial incapacity lacks any substantiation as the plea is vague and overlooks the fact that the respondent no. 1 is the owner of 4 killas of land, and does not negate the presumption under Section 139 of the NI Act. In view of the above, it is contended that the conviction and sentence awarded by the trial court, and affirmed by the appellate court, are just and proper and do not call for any interference.

3. <u>Analysis</u>

Heard counsels for both parties at length and having gone through the case file the court believes that before discussing the case on merits, it is apposite to discuss the ingredients for the offence of Section 138, NI Act.

> *138. Dishonour of cheque for insufficiency, etc., of funds in the account. 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.

To establish the commission of an offence of dishonour of cheque each of the ingredients under Section 138 of the NI Act has to be proven, the Supreme Court in ***"Nishant Aggarwal v. Kailash Kumar Sharma, reported in AIR 2013 SC 2634"***, interpreted Section 138 of the NI Act and laid down that Section 138 has five components, namely:

1. Drawing of the cheque;
2. Presentation of the cheque to the bank;
3. Returning the cheque unpaid by the drawee bank;
4. Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and
5. Failure of the drawer to make payment within 15 days of the receipt of the notice.

The present case appears to satisfy all the essential ingredients constituting an offence under Section 138 of the NI Act. It is an admitted position that the cheque in question bearing no. 583682 dated 09.05.2016 for Rs. 5,00,000/- was issued by the petitioner-accused and was duly presented for encashment by the complainant-respondent no.1 but the same was dishonored vide memo dated 10.05.2016. Upon dishonour of the said cheque, a statutory demand notice was issued on 16.05.2016, and despite the service of said notice, the petitioner failed to remit the cheque amount within the stipulated statutory period of 15 days.

This Court is of the considered opinion that the primary contention raised by the petitioner rests on the assertion that the complainant (respondent no. 1 herein) lacked the requisite financial capacity to advance a loan of ₹5,00,000/- to the petitioner. It has been submitted that the petitioner, being the owner of 8–9 Killas of agricultural land, was financially sound and, therefore, was rather under no compulsion to borrow funds from the respondent no. 1. However, the material placed on record clarifies that the respondent no. 1 is also the owner of 4 Killas and thus cannot be termed financially incapable of advancing a loan to the petitioner.

Moreso, this argument of the petitioner, in the absence of any supporting evidence, remains a bald assertion and does not, in itself, suffice to dislodge the statutory presumptions that arise under the Negotiable Instruments Act, 1881. The petitioner has failed to provide any credible explanation as to how the cheque in question, admittedly bearing his signature, came into the possession of the respondent no. 1 if no financial transaction had ever taken place between the parties. The mere denial of liability, without substantiating the same through cogent documentary or oral evidence, is insufficient to rebut the presumption under the law. It is pertinent to note that Section 139 of the NI Act, raises a presumption in favour of the holder of the cheque that the same was issued for the discharge, in whole or in part, of a legally enforceable debt or liability. Once the issuance of the cheque and the signature thereon are admitted or established, the burden shifts to the accused to rebut the said presumption by leading evidence, either direct or circumstantial, sufficient to raise a probable defence.

In the present case, the petitioner has not adduced any material to displace the statutory presumption under Section 139, NI Act. In the absence of any plausible explanation or defence, the execution of the cheque coupled with its dishonour and the failure of the petitioner to make payment within the statutory period post service of legal notice, clearly attract the penal consequences under Section 138 of the NI Act. Reliance can be placed on the Supreme Court judgement of ***Rangappa vs. Sri Mohan: (2010) 11 SCC 441***, wherein the opinion of Justice K.G.Balakrishnan for a three judges Bench is relevant to be noted as under:

> *"26. ... we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."*

In the case at hand, all essential ingredients to constitute an offence under Section 138 of the NI Act stand duly satisfied. Consequently, the revision petition filed by the petitioner challenging the concurrent findings of the Trial Court and the Appellate Court is devoid of merit and does not warrant interference. Accordingly, the same is liable to be dismissed.

The Supreme Court in case of ***Bannareddy vs. State of Karnataka reported in (2018) 5 Supreme Court Cases 790***, held as follows:-

> *"10….It is well settled principle of law that the High Court should not interfere in the well reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself."*

The scope of revisional jurisdiction of the Court have been discussed by the Supreme Court in ***"State of Kerala Versus Puttumana Illath Jathavedan Namboodiri", (1999) 2 SCC 425***, wherein it has been held as under:

> *"5. …... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."*

In another decision reported in, ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123,*** the Apex Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in para.14 (SCC p.135) :

> *"14. …... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional*

jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaring unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, courts may not interfere with decision in exercise of their revisional jurisdiction."

Keeping in mind the legal spectrum discussed hereinabove and backdrop of facts and circumstances, no ground, much less sufficient and cogent, has been made out by the petitioner for the purpose of filing the revision petition.

4. **Relief**

In view of the foregoing discussion, the present revision petition is hereby dismissed. The judgment of conviction rendered by the Trial Court dated 28.10.2017 and subsequently affirmed by the Appellate Court dated 02.04.2025 is upheld. Consequently, all pending criminal miscellaneous applications stand disposed of accordingly.

(SANDEEP MOUDGIL)
JUDGE

19.08.2025
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No