2025:PHHC:040042

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

CRR No. 1495 of 2023 (O&M)
Reserved on : 20.03.2025
Pronounced on : 26.03.2025

Kala **...Petitioner**

Versus

The Ferozepur Primary Co-operative Agriculture Development Bank Limited **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Lokesh Vohra, Advocate
for the petitioner.

Ms. Swati Batra, Deputy Advocate General, Punjab.

Mr. A. P. S. Mann, Advocate
for the respondent/complainant.

MANISHA BATRA, J.

1. The present revision petition has been filed against the judgment of conviction and order on quantum of sentence, both dated 29.11.2019, passed by the Court of learned Judicial Magistrate First Class, Ferozepur in criminal complaint bearing CIA No. NACT/1035/2016, titled as ***The Ferozepur Primary Co-operative Agriculture Development Bank vs. Kala***, filed under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'N. I. 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 fine of Rs. 2,90,000/- as compensation to the complainant 5,000/-, in default of which, he was directed to further undergo simple imprisonment for a period of six months. The

petitioner has also laid challenge to the judgment dated 18.05.2023, passed by the Court of learned Additional Sessions Judge-cum-Fast Track Court, Ferozepur, whereby the appeal filed by him had been dismissed.

2. For the sake of coherence and convenience, the parties shall be referred to as per their original nomenclature given before the learned trial Court.

3. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned complaint had been filed on the allegations that the accused had secured a loan for an amount of Rs.5,00,000/- as KCC loan from the complainant-Bank. The loan was to be repaid in installments along with interest. To discharge his liability towards repayment of the loan, the accused had issued a cheque for a sum of Rs.2,90,000/- on 15.10.2016. When presented before the banker of the complainant, the said cheque was dishonoured due to insufficiency of funds on 17.10.2016. Despite issuance of a registered legal notice dated 07.11.2016, the accused did not make payment of the cheque amount, thereby compelling the complainant to file the aforesaid complaint.

4. On the basis of the preliminary evidence produced on record before the learned trial Court, process under Section 138 of the N. I. Act was issued against the accused. He appeared before the learned trial Court and was served with notice of accusation. The complainant-Bank examined one witness, besides placing reliance on some documentary evidence and thereafter its evidence was closed.

5. The statement of the accused under Section 313 of Cr.P.C. was recorded, wherein he abjured his guilt and claimed to be innocent. The defence as set up by the accused was that he had not issued any cheque in favour of the

complainant to discharge any liability and that the complainant had procured a blank signed cheque from him at the time of advancement of loan as security, which was misused by it. No defence evidence had been adduced.

6. After giving due deliberations to the contention as raised by both the sides and on appraising the entire evidence produced on record, the learned trial Court held the accused guilty under Section 138 of the N. I. Act and sentenced him in the manner as mentioned above. Apart from that, fine of Rs. 2,90,000/- was also imposed upon the accused, which was payable to the complainant as compensation. The accused filed appeal before the learned first appellate Court, which was dismissed, vide impugned judgment dated 18.05.2023.

7. It is argued by learned counsel for the accused-petitioner that the impugned judgments, passed by the learned trial Court as well as the learned first appellate Court, are not sustainable in the eyes of law and are liable to be set aside as the findings given therein are based on conjectures and surmises. The Courts concerned did not apply their judicious mind. Non-speaking orders had been passed. The fact that the cheque in question was a security cheque and was not issued by the accused to discharge any legally enforceable debt had not been taken into consideration. The accused had produced evidence to show that as on the date of lodging of the complaint, only an amount of Rs.1,70,300/- was payable by him but the same had also not been taken into consideration. With these broad submissions, it is, therefore, urged that the present revision petition deserves to be accepted, the impugned judgments are liable to be set aside and that the accused deserves acquittal.

8. Learned Deputy Advocate General, Punjab has not advanced any

argument.

9. Learned counsel for the respondent/complainant, on the other hand, has argued that there was overwhelming evidence on record of the learned trial Court to prove that the cheque in question was issued by the accused to the complainant to discharge his legally enforceable and existing liability as on the date. There is presumption of a legally enforceable debt in favour of the holder. The accused has failed to rebut the statutory presumption under Section 139 of the N. I. Act. He had admitted his signatures on the cheque in question as well as the fact that it was issued by him. No evidence in defence had been produced by him. The cheque in question was not issued by way of security. Even if it was to be presumed so, the same was part of commercial process and could certainly be used towards discharge of the liability of the drawer. It is, therefore, argued that there is not merit in the petition and it is urged that the same is liable to be dismissed. To fortify his arguments, learned counsel for the complainant has relied upon the authorities cited as ***Prem Rattan Sood vs. M/s Arora Agro Chemicals Handiaya Bazar, Barnala and another***, ***CRR-1119-2021***, decided on 01.10.2021 by this Court and ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited : 2016 (10) SCC 458***.

10. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

11. At the very outset, 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:

> **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."

12. Further, under Section 118(a) of the N. I. Act, there is a presumption of consideration that every negotiable instrument was made or

drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration until the contrary is proved. Then, as per provisions of Section 139 of the N. I. Act, if signatures on a cheque are admitted, the presumption lies that such cheque is issued in order to discharge legally enforceable debt since the well settled proposition of law is that once issuance of cheque and signature thereof are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though he need not adduce his own evidence and can rely upon the material submitted by the complainant. Reference in this regard can be had to the observations made by Hon'ble Supreme Court in ***Rangappa vs. Sri Mohan : 2010 (3) RCR (Criminal) 164*** and ***Goaplast (P) Ltd. vs. Chico Ursula D'Souza : 2003 (2) RCR (Criminal) 131***.

13. In the instant case, the contention of the petitioner is that the cheque in question was a security cheque and was not issued to discharge any legally enforceable debt. However, this contention has no substance in view of the fact that the petitioner neither denied his signatures on the cheque in question nor the factum of issuance thereof. It is also undisputed that he had availed loan facility from the respondent-Bank and had to repay the same. It is also not the case of the accused that as on the date of issuance of cheque in question, his liability did not subsist. Learned counsel for the petitioner/accused has tried to make out a case during the course of arguments that as on the date of issuance of cheque, only an amount of Rs. 1,70,300/- was payable by the petitioner and, therefore, cheque for an amount of Rs.2,90,000/-

could not have been presented, however, no evidence whatsoever had been produced by the accused before the learned trial Court to show that as on that date, his liability was only to the extent of Rs.1,70,300/- and not of Rs. 2,90,000/- or beyond that amount.

14. Further, no evidence has been produced on record to show that the cheque in question was issued by way of security towards advance payment and not qua any subsisting liability. More so, even if it is presumed for the sake of arguments that this cheque was issued towards advance payment and was by way of security, still in the considered opinion of this Court, the said fact did not help the accused in any manner, since the settled proposition of law is that if on the date of issuance of cheque, liability of debt exists or the amount has become legally recoverable, Section 138 of the N. I. Act is attracted since such cheque represents the outstanding liability. If on the date of the cheque, there is debt or liability in terms of the loan agreement, cheque even issued towards advance payment attracts Section 138 of the N. I. Act. Reliance in this regard can be placed upon the authority cited as ***Sripati Singh (since deceased) Through his Son Gaurav Singh vs. The State of Jharkhand & another : Livelaw 2021 SC 606***, wherein the cheque, which was issued as security, was presented for realization after the period agreed for repayment of the loan amount and the loan advanced had already fallen due for payment and it was held that if the cheque, which was given as security, had matured for payment, 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.

15. It was further observed by Hon'ble Supreme Court 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.

16. On applying the above discussed position of law to the peculiar facts of the present case, it is observed that firstly, the claim of the petitioner that the cheque in question was issued by way of security, has not been substantiated by producing any cogent and convincing evidence by him. Secondly, even if it is presumed to be so, still this cheque had been presented by the complainant-Bank for realization on 17.10.2016. Evidently, as on the

date of presentation of the cheque for realization, the repayment of the loan amount as agreed under the loan agreement had matured and, therefore, the amount as mentioned in the cheque had also become due and payable. As already mentioned the claim that only an amount of Rs.1,70,300/- was payable has not been substantiated by any evidence. As such to contend that the cheque should be held as security even after the amount had become due and payable cannot be considered to be sustainable. The loan was in subsistence when the cheque was issued and had become repayable subsequently. In ***Sampelli'***s case (supra), it was observed by Hon'ble Apex Court that dishonour of a cheque issued for discharge of later liability is also covered by the statute in question, if on the date of the cheque, there was a debt/liability in presenti in terms of the loan agreement. Reference can also be had to authority cited as ***Shalini Enterprises vs. Inida Bulls Financial Service : 2013 (2) CCC 835***, wherein the accused had availed loan from the respondent-Bank. A cheque was issued by the accused, which was dishonoured. A complaint under Section 138 of the N. I. Act was filed. The accused took a plea that the cheque was a security cheque. It was held by this Court that the security cheque is integral part of commercial process entered into between the accused and the complainant. Security was not only a deterrent for the drawer against dishonouring his financial commitment but can also be legally and validly utilized towards the discharging of the liability of the drawer. It was also held that a security cheque is an acknowledgment of liability on the part of the drawer that the cheque holder may use the security cheque as an alternate mode of discharging his/its liability. The argument that on dishonour of such cheque, no offence under Section 138 of the N. I. Act was made out, was rejected.

17. In view of the above discussion, it is apparent that the cheque as well as the signatures on the same have been accepted by the petitioner as such, the presumption under Section 139 of the N. I. Act would automatically operate. The burden lied 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 first 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.

26.03.2025 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*