



\$~7 to 11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 945/2019 & CRL.M.(BAIL) 1581/2019**

AMIT ARORA

.....Petitioner

versus

PUNJAB & SIND BANK
With

.....Respondent

CRL.REV.P. 946/2019, CRL.REV.P. 947/2019, CRL.REV.P. 948/2019 & CRL.REV.P. 949/2019

For Petitioner: Mr. Vikas Manchanda, Mr. Saksham, Ms. Riya Nagar, Advocates.

For Respondent: Ms. Seema Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
24.11.2025

%

1. The above-captioned revision petitions under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973¹ assail a common order dated 28th August, 2019, passed by the Sessions Court, whereby the criminal appeals preferred by the Petitioner against his conviction and sentence for offences under Section 138 of the Negotiable Instruments Act, 1881², in five separate cases, have been dismissed. Consequently, the orders on sentence passed by the Metropolitan Magistrate have been affirmed.

2. Considering the fact that all the petitions rest on a common factual

¹ "CrPC"

² "NI Act"



matrix and involve identical grounds of challenge based on evidence that was common to all complaints, it is considered appropriate to decide them together by this composite order.

3. The relevant facts, as emerging from the record, are as follows:

3.1. Punjab & Sind Bank (the Respondent) instituted separate complaints under Section 138 NI Act, each arising out of a different cheque issued by the Petitioner, Amit Arora. The cheques were drawn on the Petitioner's personal bank account maintained with Punjab National Bank, Shivaji Marg, Kirti Nagar, New Delhi. On presentation, the cheques were dishonoured, and despite service of statutory notices of demand, the Petitioner allegedly failed to make payment of the cheque amounts within the stipulated time, thereby constituting offence under Section 138 NI Act.

3.2. In the complaints, Punjab & Sind Bank alleged that M/s Global Trade Resources had availed various credit facilities from the Bank, including a car loan, and was operating an account with it in the normal course of business. The Petitioner was stated to be a partner of the said firm. It was the Bank's case that, in discharge of the firm's outstanding liabilities, the Petitioner, acting as partner, issued the cheques in question in favour of M/s Global Trade Resources so that, upon honour, the proceeds would be credited directly into the firm's account with Punjab & Sind Bank and appropriated towards the dues.

3.3. Punjab & Sind Bank, therefore, maintained the separate complaints as the creditor and intended beneficiary of the cheque proceeds, asserting that the amounts, though payable on the face of the instruments to M/s Global Trade Resources, were meant to be received and adjusted by the Bank in the firm's account.



4. After recording pre-summoning evidence, the Trial Court took cognizance and summoned the Petitioner. By order dated 20th October, 2016, notice under Section 251 CrPC was framed, to which the Petitioner pleaded not guilty and claimed trial. In defence, he examined himself as DW-1 and also examined one Arun Kochar as DW-2. The Complainant witnesses, however, was not subjected to any cross-examination and went un rebutted.

5. Mr. Vikas Manchanda, counsel for the Petitioner, assails the impugned orders on several grounds, which, in substance, are as follows:

5.1. The statutory demand notices under Section 138 NI Act and the averments in the respective complaints are materially at variance. In the demand notices, the Bank specifically stated that the cheques had been issued by the Petitioner in favour of the Bank, whereas in the complaints it is alleged that the cheques were issued in the name of M/s Global Trade Resources. This inconsistency goes to the root of the matter and renders the complaints non-maintainable, as the foundational requirement of a valid and consistent demand notice is not satisfied.

5.2. The complaints are defective for non-joinder of a necessary party. The Bank's own case is that the cheques were issued in favour of M/s Global Trade Resources and that the Petitioner's liability arises in his capacity as a partner of the firm. In the absence of the firm being arrayed as an accused, and any statutory notice addressed to the firm, proceedings under Section 138 NI Act could not have been validly maintained against the Petitioner alone. The alleged vicarious liability of a partner cannot be adjudicated without impleading the firm whose liability is said to be primary.

5.3. The Trial Court and the Appellate Court failed to afford the Petitioner



a fair opportunity to rebut the presumption under Section 139 NI Act. The Petitioner's application under Section 145(2) NI Act seeking recall and cross-examination of the Bank's witness was dismissed on the ground that it was filed at the stage of defence evidence. Section 145(2) creates a substantive right in favour of the accused to have the Complainant's witness summoned and examined, and does not restrict the stage at which such a request may be made. In any event, Section 311 CrPC confers wide power on the Court to summon or recall any witness at any stage if such evidence appears essential to a just decision. By refusing recall at the juncture, the Trial Court effectively denied the Petitioner a fair trial and an opportunity to dislodge the statutory presumption.

5.4. Punjab & Sind Bank is not a "*holder*" or "*holder in due course*" in terms of Sections 8 and 9 of NI Act. There is no endorsement of the cheques in favour of the Bank, nor any material to show that the Bank became the payee or endorsee in its own right. In the absence of such endorsement or assignment, the Bank could not have maintained a complaint under Section 138 NI Act merely on the assertion that the proceeds, if realised, would have been appropriated in the loan account of M/s Global Trade Resources.

5.5. Lastly, the complaints and the evidence led on behalf of the Bank do not establish the existence of any legally enforceable debt or liability *qua* the Petitioner. The Bank has proceeded solely on the basis of the dishonoured cheques, without demonstrating how the precise amounts reflected therein were due and payable by the Petitioner, either personally or as a partner. In absence of clear proof of the underlying liability, the conviction under Section 138 NI Act is unsustainable.

6. Ms. Seema Gupta, counsel for the Respondent/Bank, supports the



impugned orders and submits that the statutory presumptions under Sections 118 and 139 NI Act squarely arise in the present case and have not been rebutted by the Petitioner. She contends that there is no variance between the legal demand notice and the complaints; the reference in the notice to cheques being issued in favour of the Bank, only reflects the purpose of payment and does not contradict the averment that the cheques were drawn in the name of M/s Global Trade Resources. The said objection is hyper-technical plea which does not go to the root of the proceedings. She further submits that the Petitioner chose not to cross-examine the Bank's witness and has led no substantive material to dislodge the presumptions, even on the standard of preponderance of probabilities. According to her, Punjab & Sind Bank is a competent complainant and, in effect, a "*holder in due course*", since M/s Global Trade Resources was a firm enjoying credit facilities from the Bank, and the Petitioner, being a partner and guarantor, issued the cheques in the name of the firm with the clear intent that the proceeds be credited to, and adjusted against, the firm's outstanding liabilities in its account with the Bank.

Analysis

7. The Court has considered the rival submissions and examined the record, including the judgments of the Trial Court and the Appellate Court. Both Courts have proceeded on the well-settled scheme of the Negotiable Instruments Act, particularly Sections 118 and 139, which raise a statutory presumption that a cheque, once drawn and signed by the accused and admitted as such, is issued in discharge of a legally enforceable debt or liability. In the present case, the signatures and issuance of the cheques by the Petitioner are undisputed. At the stage of framing notice under Section



251 CrPC, the Petitioner stated as under:

“Q. Do you plead guilty or claim trial?

A. I plead not guilty and claim trial.

Q. What you have to say in your defence?

A. The cheques were deposited in the normal course of banking in the cash credit account and does not entail any liability of the accused. I have received the legal demand notice.”

The Petitioner accepts that the cheques were issued by him, drawn on his personal account and deposited in the cash credit account of M/s Global Trade Resources with the Respondent Bank. The challenge is, therefore, not to execution, but to the capacity of the Bank to maintain the complaints and to the existence of liability.

Holder in due course / maintainability of complaint

8. The Petitioner’s principal argument concerns the Respondent’s status as “*holder in due course*” and the absence of endorsement in its favour. Both the Trial Court and the Appellate Court have relied on ***Mahadev Corporation v. Allahabad Bank***³, ***Bank of India v. State & Ors.***⁴, and ***India Saree Museum v. P. Kapurchand & Anr.***⁵, to hold that where a bank is in possession of a cheque issued for the specific purpose of discharging an existing debt due to that bank, it may be treated as a “*holder in due course*” even if the cheque is drawn in the name of the debtor and there is no formal endorsement. Section 9 NI Act defines “*holder in due course*” as any person who, for consideration, becomes the possessor of a cheque if payable to bearer, or the payee or endorsee if payable to order, before it becomes payable. The consideration, in such cases, is the pre-existing liability of the debtor to the bank.

³ 120 (2005) DLT 135.

⁴ CrI. M.C. 2452/2009.



9. In the present case, it is not in dispute that: (i) M/s Global Trade Resources enjoyed credit facilities from the Respondent Bank; (ii) there was an outstanding liability far exceeding the aggregate value of the cheques; and (iii) the Petitioner, as partner, issued the cheques from his personal account in favour of the firm to be deposited in the firm's account with the Respondent for adjustment towards that liability. On these admitted facts, both Courts below were justified in treating the Respondent Bank as the beneficiary and holder for value of the cheques and, therefore, competent to maintain the respective complaints under Section 138 NI Act. The absence of a formal endorsement on the face of the cheques does not, by itself, defeat the Bank's locus in the circumstances of this case.

Alleged variance between demand notice and complaint

10. The Petitioner next contends that there is a variance between the statutory demand notice and the complaint, on the footing that the notice states the cheques were issued in favour of the Bank, whereas the complaint avers that the cheques were drawn in favour of M/s Global Trade Resources. A conjoint reading of the notice and the complaint, however, shows that both describe the same transaction: cheques drawn by the Petitioner on his personal account, intended to be deposited in the firm's account with the Respondent Bank for adjustment against outstanding dues. The reference in the notice to cheques issued in favour of the Bank evidently describes the purpose and destination of the funds, not the literal name written on the cheque.

11. Moreover, the Petitioner unequivocally admitted in his Section 251 CrPC statement that he had received the legal demand notice and did not

⁵ 1991 (1) BC 344.



choose to reply to it or raise any objection at the relevant time. No prejudice has been demonstrated on account of this alleged inconsistency, nor does it obscure the nature of the demand or the underlying liability. The foundational requirements under Section 138 NI Act stand satisfied; this ground does not furnish any basis to unsettle the concurrent findings.

Non-impleadment of the firm

12. The argument that the complaints are fallacious for non-joinder of M/s Global Trade Resources is also misconceived. The cheques in question were drawn by the Petitioner on his personal bank account. He is, therefore, the “*drawer*” within the meaning of Section 7 NI Act and squarely falls within the ambit of Section 138 as the person who “*draws*” the cheque. The firm is the named payee, and the Bank is the creditor in whose favour the proceeds were to be adjusted.

13. The doctrine of vicarious liability under Section 141 NI Act arises where an offence under Section 138 is committed by a “*company*” (or a firm) that is itself the drawer of the cheque, and directors/partners are sought to be made liable by virtue of their position. That situation does not arise here, as the drawer is the Petitioner in his individual capacity, not the firm. In such a case, the liability of the drawer is direct and primary, and there is no requirement in law that the payee firm must also be arrayed as an accused in order to sustain proceedings against the drawer. The Appellate Court has rightly rejected this contention.

Opportunity to cross-examine / Section 145(2) NI Act and Section 311 CrPC

14. As regards the alleged denial of opportunity to cross-examine the Bank’s witness, the sequence of events is material. On 20th October, 2016, notice under Section 251 CrPC was framed and the Petitioner was granted



liberty to move an application under Section 145(2) NI Act to recall and cross-examine the complainant's witness. Despite this opportunity, no such application was filed. The complainant's evidence was thereafter closed on 20th December, 2016. The matter was listed on multiple dates; the statement of the accused under Section 313 CrPC was recorded on 12th September, 2017, and the case was fixed for defence evidence. It was only on 5th January, 2018, more than a year after closure of complainant's evidence and after the matter had reached the stage of defence, that the Petitioner moved an application under Section 145(2) NI Act, which was rejected as belated. The Petitioner did not challenge that order and instead proceeded to examine himself as DW-1, and Arun Kochar as DW-2, in defence.

15. Section 145(2) NI Act grants an accused the right to have the complainant's witness summoned for cross-examination, but that right must be exercised at the appropriate stage and with due diligence. Section 311 CrPC confers a wide but discretionary power on the Court to summon or recall a witness if essential to a just decision. In the present case, the Trial Court found no justification to recall the complainant's witness at the defence stage after prolonged inaction, and the Appellate Court has affirmed that view. Considering the Petitioner's own conduct, it cannot be said that there was a denial of fair opportunity warranting interference in revision.

Existence of legally enforceable debt / rebuttal of presumption

16. On the merits of liability, once the issuance and signatures on the cheques are admitted, the presumptions under Sections 118(a) and 139 NI Act operate in favour of the complainant that the cheques were issued in discharge of a legally enforceable debt or liability. The burden then shifts to the accused to rebut the presumption on the standard of preponderance of



probabilities, which may be done either by leading defence evidence or by eliciting material inconsistencies in the complainant's case.

17. In the present case, both Courts below have recorded that: (i) the existence of substantial outstanding liability of M/s Global Trade Resources towards the Respondent Bank was not seriously disputed; (ii) the Petitioner's own case was that the cheques were issued for raising capital of the firm, a plea which sits uneasily with his knowledge of insufficient funds in his account and with the admitted fact that the firm already enjoyed credit facilities; and (iii) no documentary material such as account statements, correspondence, or any alternative explanation for the issuance of the cheques was produced to render the Bank's version improbable. On this footing, both Courts concluded that the Petitioner had failed to displace the statutory presumptions and that the cheques were issued towards discharge of an existing liability of the firm to the Bank. This Court finds no perversity or misdirection in that conclusion.

Revisional scope

18. It also bears emphasis that the present petitions invoke this Court's revisional jurisdiction against concurrent findings of conviction recorded by the Trial Court and affirmed in appeal. The scope of interference under Sections 397 and 401 CrPC is narrow. This Court is not sitting in a second appeal on facts and will interfere only where there is patent illegality, gross perversity in appreciation of evidence, or a manifest miscarriage of justice. The impugned judgments are reasoned, engage with the evidence and the applicable legal principles, and address each of the defences raised. No such infirmity has been demonstrated as would justify revisional interference.

19. In view of the foregoing discussion, none of the grounds urged by the



Petitioner disclose any error of law or perversity in the appreciation of evidence. The concurrent findings as to the Respondent Bank's competence to maintain the complaints, the validity of the statutory notices, the non-requirement of impleading the firm as an accused in the facts of this case, the absence of denial of fair opportunity, and the existence of a legally enforceable liability, do not warrant interference.

20. The revision petitions are, accordingly, dismissed. Any interim orders, including the order dated 06th September, 2019, stand vacated.

SANJEEV NARULA, J

NOVEMBER 24, 2025/ab