IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

231

CRR-2374-2016(O&M)
Date of Decision: 13.02.2026

Harpreet Singh ......Petitioner

VERSUS

State of Punjab & another ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Shwas Bajaj, Legal Aid Counsel for the petitioner.

Dr. (Ms.) Savi Nagpal, AAG, Punjab.

Mr. Manpreet Singh, Legal Aid Counsel for respondent No. 2.

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VINOD S. BHARDWAJ, J. (Oral)

The instant revision petition has been preferred against the judgment dated 02.03.2016 passed by Additional Sessions Judge, Patiala whereby the appeal preferred by the petitioner herein against the judgment of conviction dated 11.03.2015 passed by the Judicial Magistrate First Class, Patiala in case bearing Complaint No. 58114 titled as Karambeer Singh v Harpreet Singh has been dismissed.

2. The brief facts, as set out in the complaint, are that the complainant and the accused were on cordial terms and maintained friendly and visiting relations, founded upon mutual trust and confidence. Owing to certain urgent domestic exigencies, the accused approached the complainant seeking financial assistance in the sum of Rs.4,25,500/-. Reposing faith in the representation so made, the complainant advanced the said amount in cash to the accused in September, 2011 at Patiala. The accused is stated to

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have assured the complainant that the aforesaid amount would be repaid within a period of two months. However, upon failure to discharge the liability within the stipulated period and in discharge of his subsisting debt, the accused issued cheque bearing No. 024895 dated 12.12.2012 for a sum of Rs.4,25,000/-, drawn on Centurion Bank of Punjab Limited, Branch The Mall, Chhoti Baradari, Patiala, in favour of the complainant. At the time of issuance of the cheque, the accused assured the complainant that sufficient funds were available in his account and that the cheque would be honoured upon presentation. Acting upon such assurance, the complainant accepted the cheque. In terms of the representation so made, the complainant presented the cheque for encashment. However, the same was returned unpaid by the banker of the accused vide return memo dated 13.12.2012, bearing the endorsement "Account Closed". Thereafter, the complainant served a legal notice dated 18.12.2012 to the accused, calling upon him to make payment of the cheque amount within the statutory period of fifteen days from the date of receipt of the notice. Despite service of the said notice, the accused failed to remit the amount in question. In the aforesaid circumstances, the present complaint came to be instituted.

3. On completion of the preliminary evidence, the accused was summoned vide order dated 08.04.2013 to face trial for commission of offences punishable under Sections 138 of the Negotiable Instruments Act, 1881.

4. Notice of accusation under Section 138 of the Act was served upon the accused, to which he pleaded not guilty and claimed trial. In order to substantiate the allegations levelled in the complaint, the complainant led

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evidence in support of his case. Upon conclusion of the complainant's evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, wherein he denied the incriminating circumstances put to him and alleged false implication.

5. After affording due opportunity of hearing to both sides and upon appreciation of the material available on record, the Magistrate returned a finding of guilt against the accused and convicted him for the offence punishable under Section 138 of the Negotiable Instruments Act. He was accordingly sentenced him as under:

Name of the convict	Convicted under Section	Sentence
Harpreet Singh	138 of Negotiable Instruments Act 1881.	Rigorous imprisonment for a period of one year and compensation equivalent to half the cheque amount.

6. The judgment of conviction and order of sentence so passed have been affirmed by the learned Appellate Court.

7. The learned counsel appearing on behalf of the petitioner has assailed the impugned judgments on the following grounds:

(a) That both the Courts failed to consider and appreciate both the oral and documentary evidence brought on record by the parties. It is submitted that the material evidence has been overlooked and the relevant statutory provisions have not been correctly applied, resulting in an erroneous conviction of the petitioner.

(b) That the very substratum of the complaint is unsustainable, inasmuch as the complainant–respondent lacked the financial capacity to advance the alleged loan amount of Rs.4,25,000/- to the petitioner. It is submitted that the complainant has failed to discharge the initial burden of establishing that he possessed the

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requisite financial means to extend such a substantial sum and further failed to prove the existence of a legally enforceable debt or liability.

(c) That neither in the complaint instituted under Section 138 of the Negotiable Instruments Act nor in the affidavit in evidence (Ex. CW-1/A) did the complainant disclose or substantiate his financial capacity to advance the alleged loan. It is submitted that during his deposition, the complainant sought to explain the source of funds by stating that the amount had been arranged from relatives. However, these material averments do not find place either in the complaint instituted under Section 138 of the Negotiable Instruments Act or in the affidavit in evidence (Ex. CW-1/A) filed by the complainant–respondent. However, the learned Courts failed to properly appreciate these significant aspects of the matter. In support of the aforesaid submission, reliance is placed upon the decision of this Court in K. Subramani v. K. Damodara Naidu, reported in (2015) 1 Civil Court Cases 001 (SC), wherein it was held that when the financial capacity of the complainant is seriously disputed, the same must be satisfactorily proved.

(d) That this specific argument was raised before the learned Appellate Court, however, the Appellate Court rejected the submission primarily on the ground that the statutory presumption under Section 118 of the Negotiable Instruments Act operates in favour of the holder of the cheque, presuming

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consideration. Thus, the Appellate Court has erred in law in mechanically invoking the statutory presumption without first examining whether the complainant had established his financial capacity to advance the alleged loan.

(e) That a specific plea was raised before the Appellate Court to the effect that the alleged cheque amount had not been reflected by the respondent–complainant in his Income Tax Returns. Non-disclosure of such a substantial amount in the statutory returns casts serious doubt on the genuineness of the transaction and further undermines the complainant's assertion of having advanced the loan. It is contended that the Appellate Court, instead of examining the evidentiary and legal implications of such non-disclosure, summarily brushed aside the contention by observing that the matter, if any, would lie between the complainant and the Income Tax Department. It is thus contended that the approach adopted by the Appellate Court, as well as that of the Trial Court, runs contrary to the settled principles and the impugned findings are illegal, unjust and contrary to the mandatory provisions of law.

(f) That the complainant has failed to specify the exact date on which the alleged loan was advanced. The complaint merely states that the amount was paid in cash at Patiala in September, 2011, without disclosing any particular date or contemporaneous record of the transaction. In this regard, reliance is placed upon the judgment reported as 2015 (4) RCR

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(Crl.) 939, wherein the Hon'ble High Court, while adverting to and relying upon the observations of this Court in 2014 (1) RCR (Crl.) 267, held that for drawing the statutory presumption under the Negotiable Instruments Act, a heavy burden lies upon the complainant to establish that he possessed the requisite funds to advance the loan and that the issuance of the cheque was in discharge of a legally enforceable debt. It was further observed that where the complainant is uncertain or not specific about the date of advancement of the loan, such deficiency assumes significance in assessing the veracity of the claim. Drawing parity with the aforesaid precedent, learned counsel for the petitioner submits that the observations therein are squarely applicable to the present case. The complainant herein was not certain about the precise date of advancement of the alleged loan and lacked the demonstrated financial capacity to advance such amount. It is thus contended that the Trial Court as well as the Appellate Court failed to properly appreciate these material submissions and binding legal principles.

(g) That during the course of cross-examination, the complainant stated that he had obtained a demand promissory note from the petitioner–accused in September, 2011 and had apprised his counsel of the same. It is, however, contended that neither in the complaint nor in the affidavit in evidence did the complainant plead or depose that any such promissory note had been executed. No such document was produced before the Court. It

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is contended that, had such a promissory note in fact been executed, there would have been no occasion or necessity for the petitioner to issue a cheque for the same amount in favour of the complainant. The inconsistency between the pleadings and the oral testimony, coupled with the non-production of the alleged promissory note casts serious doubt on the complainant's version.

(h) That the circumstances indicate that a blank cheque, allegedly in possession of the complainant, has been misused. In support of this defence, the petitioner examined a handwriting and document expert, Inderjit Singh (DW-1), who deposed that the cheque in question was filled in by the same person who had filled the body writing on a cheque involved in another complaint titled Jeakhwinder Singh v. Ravinder Singh. Learned counsel submits that the Trial Court as well as the Appellate Court failed to properly appreciate these material aspects of the defence evidence and the inconsistencies in the complainant's case.

(i) That the petitioner had specifically pleaded that Sukhwinder Singh is the brother-in-law of the complainant, Karambeer Singh and that an FIR had been registered in relation to an occurrence dated 01.01.2013, wherein the complainant and others were arrayed as accused. The said FIR was lodged at the instance of Smt. Manpreet Kaur, wife of Ravinder Singh, who is the sister-in-law of the petitioner. It was further the petitioner's

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case that he and his brother, Harpreet Singh, were residing in the same house and that the complainant had removed the petitioner's cheque book from the said premises. According to the petitioner, this defence version furnished a plausible explanation for the alleged misuse of the cheque in question. However, both the Trial Court and the Appellate Court discarded the said defence without proper appreciation of the attendant circumstances. It is further contended that in a separate complaint instituted by Karambeer Singh against the petitioner's brother, Ravinder Singh son of Jaswant Singh, a similar version advanced by Karambeer Singh came to be accepted by the Court of Judicial Magistrate First Class, Patiala, vide judgment dated 11.03.2015. Thus, acceptance of such a version in one proceeding and its rejection in the present case, without cogent reasoning, demonstrates inconsistency in judicial approach.

8. Learned counsel appearing on behalf of the respondent–complainant contended that the cheque in question was admittedly drawn on an account maintained by the petitioner-accused. In such circumstances the statutory presumption under Section 139 of the Negotiable Instruments Act must necessarily operate in favour of the complainant, to the effect that the cheque was issued in discharge of a legally enforceable debt or liability. It was further submitted that a perusal of the cheque in question, the return memo evidencing its dishonour and the legal notice duly served upon the accused, clearly establishes that all mandatory prerequisites contemplated

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under Section 138 of the Act were strictly complied with prior to the institution of the complaint. The cheque was presented within the period of validity, the same was returned unpaid and a statutory notice demanding payment was issued within the prescribed time. Despite receipt of such notice, the accused failed to make payment within the stipulated period. Learned counsel thus argued that there exists no procedural infirmity or technical lacuna in the complaint and that the foundational requirements of the offence stand duly satisfied.

9. Learned counsel for the respondent–complainant submits that the Trial Court as well as the Appellate Court have concurrently recorded findings of fact upon due and proper appreciation of the oral and documentary evidence on record. Such concurrent findings are not amenable to interference in revisional jurisdiction unless demonstrated to be perverse or manifestly illegal, which is not the position in the present case.

10. It is further contended that once the issuance of the cheque and the signature of the accused thereon stand admitted or proved, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881 come into operation in favour of the complainant. The burden thereafter shifts upon the accused to rebut the presumption of consideration and legally enforceable debt by raising a probable and credible defence. According to the respondent, the petitioner has failed to discharge this onus.

11. It is argued that the plea regarding the complainant's alleged lack of financial capacity is misconceived and based on conjecture. Both the Courts below have duly considered the cross-examination and found no material contradiction sufficient to render the transaction doubtful.

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Similarly, non-reflection of the loan amount in the Income Tax Returns, even if assumed, would not invalidate the transaction or extinguish criminal liability under Section 138, as any such lapse would be a matter between the assessee and the revenue authorities.

12. As regards the absence of a specific date of advancement of the loan, it is submitted that the complaint clearly states that the amount was advanced in September, 2011 at Patiala, which sufficiently satisfies the requirement of pleading. The law does not mandate proof of an exact date so long as the existence of a legally enforceable debt and issuance of the cheque in discharge thereof are established.

13. It is also contended that the contention concerning the alleged promissory note and the theory of misuse of a blank cheque is an afterthought. Counsel contends that even assuming the existence of a promissory note, issuance of a cheque in discharge of the same liability is neither improbable nor legally impermissible. The defence evidence, including the testimony of the document expert, has been duly considered and found insufficient to rebut the statutory presumption.

14. It is submitted that the allegations regarding removal of the cheque book and references to other criminal proceedings are extraneous and unsupported by any contemporaneous complaint or credible material. Counsel contends that each case must be decided on its own evidence and reliance on findings in separate proceedings is misplaced.

15. I have heard the counsel appearing for the parties and have gone through the documents appended with the present petition.

16. At the outset, it must be noted that the present proceedings arise

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from concurrent findings of fact recorded by both the Courts. The Trial Court, upon appreciation of the oral and documentary evidence, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and the Appellate Courtre appraised the evidence and affirmed the conviction and sentence.

17. It is well settled that in exercise of revisional jurisdiction, this Court does not act as a Court of second appeal. Interference is warranted only where the findings are shown to be perverse, manifestly illegal or resulting in gross miscarriage of justice. In this context, reference may be made to the decision of this Court in ***'State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand & Ors.'***, reported as **AIR 2004 SC 4412**, wherein it was held as under:

> *"The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section401 CrPC, read together, do not indicate that the*

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revisional power of the High Court can be exercised as a second appellate power."

18. In **Raj Kumar Vs. State Of H.P** : **AIR ONLINE 2008 SC 340**, Hon'ble Supreme Court held:

"8. In State of Orissa v. Nakula Sahu and Ors. (AIR 1979 SC 663) it was heldthat the High Court should not have interfered with the concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. In State of Kerala v. Puttamana IllathJathavedan Namboodiri (1999 (2) SCC 452) it was held that the revisional 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 re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

19. It is also apposite to refer to relevant provisions of the Negotiable Instruments Act, 1881. The same are extracted as under:

"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."

118. Presumptions as to negotiable instruments. - Until the contrary is proved, the following presumptions shall be made:-

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(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;

(b) as to date. - that every negotiable instrument bearing a date was made or drawn on such date;"

20. Section 139 includes a presumption not merely as to the issuance of the cheque, but also as to the existence of a legally enforceable debt or liability. Consequently, once execution of the cheque is admitted or proved, the Court is bound to presume that the holder of the cheque received the same in discharge of such debt or liability. The law is clear that such presumptions are rebuttable; however, the burden to rebut lies upon the accused. The standard of rebuttal is that of preponderance of probabilities, yet the defence must be plausible and supported by cogent material.

21. In view of the settled legal position delineated hereinabove, it is evident that once the statutory presumption under Section 139 of the Negotiable Instruments Act is attracted, the complainant is not required, in the first instance, to independently prove the advancement of the loan or his financial capacity to extend the same. The law mandates that upon proof or admission of execution of the cheque, a presumption arises that the cheque was issued in discharge of a legally enforceable debt or liability. The evidentiary burden thereafter shifts upon the accused to rebut the presumption by raising a probable defence. In the present case, the accused–petitioner has failed to discharge the same as the defence projected is neither supported by cogent evidence nor sufficient to create a preponderance of probabilities in his favour.

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22. The next argument of the petitioner relates to the alleged lack of financial capacity of the complainant. It was contended that the complainant did not disclose the precise source of funds either in the complaint or in the affidavit in evidence and that the amount was not reflected in the Income Tax Returns. I am unable to accept this submission. In this context, reliance may be placed upon the decision of this Court in **'*Ganga Prashad v. Lalit Kumar*'**, **2008 (3) RCR (Criminal) 159**, wherein it was held that the advancement of a loan cannot be disbelieved merely on the ground that the complainant did not reflect the said amount in his Income Tax Returns. It was observed that non-disclosure in fiscal records, by itself, does not negate the existence of a legally enforceable debt for the purposes of proceedings under Section 138 of the Negotiable Instruments Act.

23. An onus is required to be discharged by the accused that there was no legally enforceable liability and that no cheque was issued to reasonably rebut the statutory presumption. A mere dismissive denial of liability is not sufficient to impeach the statutory presumption.

24. Counsel for the petitioner has failed to refer to any material to disbelieve the due execution of the cheque. The suggestions and the defence, not corroborated by any reasonable explanation, requires no further burden to be discharged by the complainant.

25. Both the Courts have examined the cross-examination of the complainant and found no material contradiction that would render the transaction inherently improbable. The mere omission to reflect the loan amount in the Income Tax Returns does not by itself negate the existence of a debt. At best, it may have implications under fiscal law, but such omission

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cannot automatically exonerate the drawer of a cheque issued towards discharge of liability. Criminal culpability under Section 138 does not hinge upon tax compliance but upon the dishonour of a cheque issued in discharge of a legally enforceable debt.

26. Equally untenable is the contention that non-mentioning of an exact calendar date of advancement of the loan is fatal to the prosecution. The complaint clearly states that the amount was advanced in September, 2011 at Patiala. The statute does not mandate proof of the precise date of advancement of the loan; what is required is proof of a subsisting legally enforceable liability on the date of issuance of the cheque. Both Courts below, on appreciation of evidence, have concurrently found that such liability existed.

27. The argument relating to the alleged execution of a promissory note and its non-production has also been considered by the courts. Even assuming that a promissory note was executed, issuance of a cheque in discharge of the same liability is not improbable. The petitioner has failed to demonstrate how the alleged non-production of such document renders the cheque transaction invalid. The defence theory of misuse of a blank cheque remains a bald assertion. The testimony of the defence document expert was duly considered by the Courts below and was found insufficient to probabilise the plea of fabrication.

28. The allegations pertaining to inter se disputes between relatives and reference to other criminal proceedings do not advance the petitioner's case. Each prosecution under Section 138 must stand on its own evidence. The acceptance or rejection of a version in a separate case involving

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different parties cannot govern the adjudication herein.

29. In view of the above, I am of the opinion that the findings recorded by the Trial Court, as affirmed by the Appellate Court, are based on sound appreciation of evidence and correct application of legal principles and thus no case for interference is made out.

30. The petition is accordingly ***dismissed***.

31. Pending misc. application(s), if any, shall stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

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