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

CRA-AS-82-2025
arising out of CRM-A-2230-MA-2018
Date of decision : 14.05.2025

The Primary Cooperative Agriculture Development Bank Ltd., Abohar

...Appellant

Versus

Darshan Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ajit Singh Sodhi, Advocate
for the appellant.

Mr. D. S. Nigha, Advocate
for the respondent.

MANISHA BATRA, J. *(Oral)*

1. Challenge in this appeal is to the judgment dated 10.11.2017, passed by the Court of learned Judicial Magistrate First Class, Abohar in Complaint bearing CIS No. NACT-167/2016, titled as ***The Primary Cooperative Agriculture Development Bank Ltd., Abohar vs. Darshan Singh***, filed under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'the Act'),* whereby the respondent/accused was acquitted and the aforesaid complaint was dismissed.

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

3. Brief facts of the case relevant for the purpose of disposal of the

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present appeal are that the aforementioned complaint had been filed by the complainant-Bank, who is a juristic person, under Section 138 of the Act on the allegations that the brother of the accused, namely Sukhpal Singh, had taken a loan from the complainant. He had executed documents, thereby agreeing to repay the loan amount with interest as stipulated in the documents. To discharge the legally enforceable debt and liability of his brother, the accused had issued a cheque for a sum of Rs. 2,72,000/- in favour of the complainant. The said cheque had been dishonoured with the remarks 'funds insufficient' on 30.11.2015. The accused failed to make payment of the cheque amount after receipt of the legal notice, thereby compelling the complainant to file the aforesaid complaint.

4. The learned Magistrate, after considering the preliminary evidence, issued process against the accused, vide order dated 11.02.2016. The accused appeared before the Court and was served with notice of accusation. The complainant produced oral as well as documentary evidence in support of the allegations in the complaint. After closure of the same, statement of the accused was recorded under Section 313 of the Code. No defence evidence had been led by him.

5. After hearing the arguments advanced by both the sides and appreciating the evidence produced on record, the learned trial Court dismissed the complaint and acquitted the accused by observing that the complainant had failed to prove that the cheque in question was issued by the accused in its favour to discharge a legally enforceable debt and the cheque so issued to discharge liability of third person, i.e. brother of the accused, did not fasten any liability under Section 138 of the Act, upon him.

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6. Feeling aggrieved, the complainant had filed an application under Section 378(4) of Cr.P.C. seeking leave to file appeal against the aforesaid judgment of acquittal. Vide order dated 30.04.2025, passed by this Court, the said application was allowed and leave was granted to the complainant to file appeal. Accordingly, the said application has been converted into present appeal, which lays challenge to the aforesaid judgment of acquittal.

7. It has been argued by learned counsel for the appellant/complainant that the impugned judgment is liable to be set aside as the findings given by the learned trial Court are not sustainable in the eyes of law. The learned trial Court did not apply its judicious mind and did not appreciate the evidence produced on record in a proper manner. The fact that the very issuance of the cheque in question by the accused raised a presumption that the same had been issued for discharge of a legally enforceable debt, had been ignored. The well settled principles of law had also not been taken into consideration. The accused had not denied that the cheque in question was issued by him and was bearing his signature. As such, the statutory presumption had been established and the ingredients for commission of offence under Section 138 of the Act were also fully established. It is, therefore, argued that the present appeal deserves to be allowed and the impugned judgment of acquittal, passed by the learned trial Court, is liable to be set aside.

8. Learned counsel for the respondent-accused, on the other hand, has argued that the findings given by the learned trial Court are well reasoned and no ground has been made out to interfere with the same. Therefore, it has been urged that the appeal is liable to be dismissed.

9. I have heard learned counsel for the parties at considerable length and have gone through the material placed on record carefully.

10. At the outset, it would be apposite to discuss the relevant provisions of law in order to ascertain the legal satisfaction required to be made by both the parties. To establish the offence under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'the Act')*, the complainant is required to prove the following ingredients:

> **(i) A cheque is drawn for the payment of any amount of money to another person;**
> **(ii) The cheque is drawn for the discharge of the 'whole or part' of any debt or other liability. 'Debt or other liability' means legally enforceable debt or other liability; and**
> **(iii) The cheque is returned by the bank unpaid because of insufficient funds.**

11. It is also relevant to refer to the proviso of Section 138 of the Act that reads as under:

> **"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, 5 [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**

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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 of other liability" means a legally enforceable debt or other liability.

12. Then Sections 118(a) and 139 of the Act are relevant for the purpose. Section 118 provides for presumption as to the negotiable instruments. As per this provision, until contrary is proved, there is a presumption 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. As per Section 139 of the Act, there is a presumption in favour of the holder that he received the cheque of the nature referred to in Section 138 of the Act for discharge, in whole or in part, for any debt or other liability. In ***Basalingappa vs. Mudibasappa, 2019 (5) SCC 418***, the Hon'ble Supreme Court summarized the principles enumerated with regard to presumption under Sections 118(a) and 139 of the Act in the following manner:

> "25. We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in the following manner:
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> 25.1. Once the execution of the cheque is admitted, Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
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> 25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the

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presumption is that of the preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposes an evidentiary burden and not a persuasive burden.

13. In ***P. Rasiya vs. Abdul Nazer, 2022 SCC OnLine SC 1131***, the Hon'ble Supreme Court had made the following observations:

> "As per Section 139 of the N.I. Act, 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 discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary."

14. Before delving further, it may be mentioned that the well settled proposition of law is that in a case of acquittal, there is a double presumption in favour of the accused as the presumption of innocence is reinforced,

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reaffirmed and strengthened by the trial Court by acquitting him. Therefore, the findings of acquittal should not be reversed in a casual manner. However, it is equally well settled that the appellate Court has power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded and if the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable, it can intervene. Now, keeping in mind the above discussed position of law, let us discuss the peculiar facts of the present case. It has been noticed that the accused did not deny his signatures on the cheque in question and also the fact that this cheque was pertaining to his bank account. Though while recording his statement under Section 313 of Cr.P.C., a plea had been taken by him that this cheque was never issued by him in favour of the complainant and he had not incurred any liability on account of raising loan by his brother, however, the plea so taken appears to be contrary to the suggestion put by him to CW-1 i.e. witness of complainant/bank, while cross-examining him, where he suggested that the cheque in question was issued by him as a security for repayment of loan of his brother. It is well settled that mere denial of liability in his statement recorded under Section 313 of Cr.P.C. by the accused is not sufficient to rebut the presumption under Sections 118(a) and 139 of the Act. In this regard, this Court relies upon the observations made by Hon'ble Supreme Court in ***Sumati Vij vs. Paramount Tech Fab Industries, AIR 2021 Supreme Court6 1281,*** wherein it was observed that the statement of an accused recorded under Section 313 of Cr.P.C. is not substantive evidence of the defence but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case against him. As such, his plea as taken in the

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statement recorded under Section 313 of Cr.P.C. cannot be considered to be a substantive piece of evidence. No reverse evidence to rebut the presumption had been adduced by the accused. Rather, he had recorded a statement before the learned trial Court on 19.04.2017, thereby undertaking to make part payment of an amount of Rs. 50,000/-, out of the cheque amount, to the complainant by 30.05.2017. All this amounts to admission of the fact that the cheque in question was issued by the accused.

16. So far the plea of the accused about the cheque in question being a security cheque is concerned, the question that arises is whether the security cheque could not be considered to have been issued for discharge of legally enforceable debt? So far as a security cheque is concerned, the position of law in this regard is also well settled. In ***Sripati Singh (since deceased) Through his Son Gaurav Singh vs. The State of Jharkhand & another : Livelaw 2021 SC 606***, a security cheque had been presented for realization after the period agreed for repayment of loan and when the loan advanced had already fallen due for repayment. It was held 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 Act and the other provisions of Act would follow. Reliance can also be placed upon the authority

cited as ***Shalini Enterprises vs. India Bulls Financial Service : 2013 (2) CCC 835***, wherein it was observed by this Court that a security cheque is an integral part of commercial process entered into between the accused and the complainant. Security cheque is not only a deterrent for the drawer against dishonouring his financial commitment but it can also be legally and validly utilized towards the discharging of the liability of the drawer. 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. Reliance can also be placed upon ***Dawn Ayanger vs. State of Assam and another, 2016 (3) SCC 1***, wherein it was observed by Hon'ble Supreme Court that a cheque issued as security would also come under the provisions of Section 138 of the Act.

17. In view of the above discussion, this Court has no hesitation to hold that since the stand taken by the accused himself was that the cheque in question was issued as a security cheque by him, therefore, this cheque would certainly fall under the provisions of Section138 of the Act and it cannot be stated that no offence under this section was made out on account of dishonour of the cheque only because it was a security cheque.

18. Proceeding further and coming to the question that since the cheque in question was issued by the accused in favour of the complainant-bank to discharge the debt of his brother and not his personal debt, therefore, can he escape his liability on that account? The learned trial Court, while acquitting the accused, had observed that since he was not the borrower of the complainant and it was his brother, who had obtained loan from the complainant, therefore, he was not liable and the cheque in question could not

be stated to have been issued for discharge of legally enforceable debt. However, this Court is inclined to hold that once the accused issued a cheque for discharge of liability of principal debtor i.e. his brother and the same was dishonoured, he could certainly be prosecuted and held guilty for offence under Section 138 of the Act, since a surety can be prosecuted under this provision. In this regard, this Court relies upon the observations made by Hon'ble Supreme Court in ***ICDS vs. Beena Shabbir, AIR 2002 SC 3014***. Reliance can also be placed upon ***Srikant Somani vs Sharad Gupta, 2005 (2) ALD (CR) 19***, wherein it was observed by the High Court of Delhi that to attract offence under Section 138 of the Act, it is not necessary that the accused has his own liability towards the complainant. It can be attracted when the cheque has been issued for discharge of any debt or other liability. As per the wordings of Section 138 of the Act, the offence is committed by the person who issued the cheque and not by the person on whose behalf the cheque is issued unless on whose behalf the cheque is issued is a company or partnership firm. This section makes it very clear that only the person who draws the cheque is liable for the offence. Vicarious liability is available only in respect of those offences committed by a company/firm as provided in Section 141 of the Act. In that case, the cheque in question was signed by petitioner No. 1 and other petitioners were not the persons, who had drawn the cheque. It was observed that only petitioner No. 1 was liable for commission of offence and he alone could be summoned, whereas, the other petitioners could not have been summoned. Reliance can also be placed upon ***M/s Conserve Ready Misx Concrete and others vs. M/s Subh Laabh Minerals, 2022 (2) AIR Kar R 90,*** wherein similar observations were made by the High Court of Karnantaka.

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19. Keeping in view the discussion as made above, this Court is of the considered opinion that the findings given by the learned trial Court are erroneous and are not sustainable in the eyes of law as while passing the same, the learned trial Court did not take all the above discussed points into consideration. Hence, the same are liable to be reversed. Accordingly, the present appeal is allowed. The impugned judgment of acquittal passed by the learned trial Court is set aside. The respondent is held guilty for commission of offence punishable under Section 138 of the Act. For addressing arguments on the quantum of sentence, let this case be listed on 15.05.2025.

14.05.2025 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes*

Whether reportable *Yes*