



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-57603-2022 (O&M)

Date of decision: 04.09.2025

Gurdyal Singh

...Petitioner(s)

VERSUS

Davinder Kumar

...Respondent(s)

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

Present :- Mr. Pankaj Bali, Advocate and
Mr. Sidhant, Advocate for the petitioner(s).

Mr. Mohit, Advocate for
Mr. Rahul Deswal, Advocate for the respondents(s).

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 21.11.2022 passed by the learned Judicial Magistrate 1st Class, Karnal whereby the application of the petitioner for summoning of witness has been dismissed in complaint case bearing No.2206 dated 28.11.2014 titled as 'Davinder Kumar Vs. Gurdyal Singh' under Section 138 of the Negotiable Instruments Act, 1881.

2. Mr. Pankaj Bali, learned counsel appearing on behalf of the petitioner, submits that the respondent-complainant instituted a complaint on the allegation that the petitioner had availed a friendly loan of ₹9,00,000/- with an assurance to repay the same in September 2014. In discharge of the said liability, the petitioner is stated to have issued cheque No.000012 dated 24.09.2014 drawn on HDFC Bank, Karnal, Account No.14341000032582,



in favour of the complainant. However, upon presentation, the said cheque was dishonoured with the endorsement "Account Closed" vide return memo dated 26.09.2014. A legal notice dated 22.10.2014 was thereafter allegedly served by the respondent-complainant upon the petitioner and eventually a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed.

3. Counsel for the petitioner contends that after recording of the preliminary evidence, the petitioner was summoned vide order dated 15.12.2014 and notice of accusation was served on the petitioner on 24.03.2015. The evidence of the complainant was examined. In defence, the petitioner examined Advocate Satish Kumar as DW-1, who deposed with regard to the financial capacity of the petitioner and also proved the marriage card of the children of the petitioner. The defence was thereafter closed vide statement dated 14.07.2016. Subsequently, vide judgment dated 15.07.2016 and order dated 18.07.2016, the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of one year and further directed to pay the cheque amount of ₹9,00,000/- to the complainant as compensation under Section 138 of the Negotiable Instruments Act, 1881. Aggrieved thereby, the petitioner preferred an appeal before the learned Additional Sessions Judge, Karnal, being CRA-465-2016, instituted on 19.08.2016. The same was allowed and the judgment of conviction and order of sentence passed by the trial Court were set aside on the ground that the statement of the petitioner under Section 313 of Cr.P.C. had not been recorded. The case was remanded to the trial Court with a direction to decide



the case expeditiously after recording the statement of the petitioner under Section 313 of Cr.P.C. and to confront him with all the incriminating evidence.

4. He further submits that pursuant to the remand, the statement of the petitioner was recorded under Section 313 Cr.P.C. by the learned Judicial Magistrate First Class, Karnal, on 16.11.2022. In his statement, the petitioner specifically denied the allegations and asserted that he had neither signed the cheque in question nor filled in its body. He further pleaded that no loan had ever been taken from the complainant and that the documents relied upon by the complainant were false and fabricated. The petitioner also sought an opportunity to lead defence evidence by way of examination of a handwriting expert and for obtaining his specimen signatures for comparison. The said application has now been dismissed by the trial Court vide order dated 21.11.2022. Impugning the said order, the criminal revision petition has been filed.

5. Counsel for the petitioner contends that the order passed by the trial Court is based on conjectures and surmises and does not taken into consideration that only one witness is required to be examined by the petitioner to prove his defence in support of the version taken under Section 313 Cr.P.C. He submits that the said evidence is likely to go to the root of the matter and that in the larger interest of justice, such opportunity ought to be granted to him.

6. Mr. Mohit, Advocate for Mr. Rahul Deswal, Advocate appears and files his vakalatnama on behalf of the respondent and contends that a



well-reasoned speaking order has been passed by the trial Court and that the same suffers from no illegality, perversity or impropriety. Hence, there is no reason for interfering with the same. He contends that the petitioner is now wanting to take advantage of the matter having been remanded to the trial Court and is attempting to prolong the proceedings with a view to delay the final adjudication of the matter.

7. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition with their able assistance.

8. Before proceedings further in matter, it would apposite to make a reference to the finding recorded by the trial Court in its impugned order dated 21.11.2020, which reads thus:-

“3. Heard. Case file perused. Perusal of the judicial file reflects that accused Gurdial Singh was convicted by the Court of Ms. Neelam Kumari, the then Learned JMIC, Karnal vide order dated 15.07.2016 and accused has preferred an appeal in the Court of Sh. Yogesh Chaudhary, Learned Additional Sessions Judge, Karnal and vide judgment dated 01.10.2022 the case was remanded back with the direction to record the statement under Section 313 Cr.P.C. by putting all the incriminating evidence to accused and thereafter directed the trial Court to decide the case as expeditiously as possible. Since the learned ASJ, Karnal directed the trial Court to record statement under Section 313 Cr.P.C. of accused and decide the



case expeditiously, so present application filed by the accused/applicant to examine the defence evidence is not maintainable at this stage. Further, in statement under Section 313 Cr.P.C. accused had made statement that cheque has not been signed by him, the body of the cheque has not been filled by him and he has not issued any cheque in favour of complainant whereas in the judgment passed by the Learned Predecessor Court in para No.11 of the judgment it has been mentioned that accused issued the cheque in question blank but signed by the accused which had been stolen from the drawer of the chamber of the accused and same has been misused by the complainant to file the present complaint. The aforesaid defence of the accused at the time of the argument of the judgment shows that accused now want to take the benefit of remand back of the file and maliciously change his defence and requested to examine the hand-writing expert and other witnesses, thus taking into consideration of the fact that if the application in hand for examination of the accused witness in defence be allowed, it will cause prejudice to the complainant, the application for summoning of witness is hereby dismissed. Nothing expressed hereunder shall be construed as my expression on the merits of the case.”

9. During the course of arguments, a specific query was posed to learned counsel for the petitioner as to whether any specific suggestion had



been put to the complainant's witnesses that the signatures on the cheque were not appended by the petitioner. Counsel fairly concedes that no such suggestion was ever put at the stage of complainant's evidence, however, suggestion was indeed made to the effect that the body of the cheque is not in the handwriting of the petitioner.

10. That being the position, the purpose of examining a handwriting expert merely to establish that the body of the cheque or the amount therein was not filled up by the petitioner, in my considered view, would not advance the case of the petitioner any further. The law laid down by the Hon'ble Supreme Court in ***Oriental Bank of Commerce v. Pramodh Kumar Tewari, 2022 SCC Online SC 1089***, has categorically held that once the signature on the cheque is admitted, the mere fact that the contents of the cheque or the amount have not been filled up by the drawer is of no consequence and does not absolve the drawer of liability under Section 138 of the Negotiable Instruments Act, 1881. The relevant extract thereof reads thus:-

“13. Section 139 of the NI Act states:

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.



14. *In Bir Singh v. Mukesh Kumar*, after discussing the settled line of precedent of this Court on this issue, a two-Judge Bench held:

33. *A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. **It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer.** If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*

34. *If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*

[...]



36. *Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.*

(emphasis supplied)

15. *The above view was recently reiterated by a three-Judge Bench of this Court in Kalamani Tex v. P. Balasubramanian.*

16. *A drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The presumption arises under Section 139.*

17. *In Anss Rajashekar v. Augustus Jeba Ananth, a two Judge Bench of this Court, of which one of us (D.Y. Chandrachud J.) was a part, reiterated the decision of the three-Judge Bench of this Court in Rangappa v. Sri Mohan on the presumption under Section 139 of the NI Act. The court held:*



“12. Section 139 of the Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it, in discharge, in whole or in part, of a debt, or liability. The expression “unless the contrary is proved” indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a “reverse onus clause” the three-Judge Bench of this Court in Rangappa held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination. The standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities. This Court held thus:

*“28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, **it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”.** Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability,*



***the prosecution can fail.** As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”*

(emphasis supplied)

18. *For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.*

11. It is evident from the perusal of the same that Hon’ble Supreme Court has held that the details in a cheque can be filled up even by any person including the complainant.

12. In view of the settled position of law, the examination of a handwriting expert merely to prove that the body of the cheque is not in the handwriting of the petitioner is not likely to advance his cause any further. Moreover, the petitioner, having failed to put any suggestion to the witnesses



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of the respondent-complainant that the cheque in question did not bear his signatures, cannot now, at this stage, be permitted to coin a fresh defence in his favour.

13. Considering it from either of the perspectives, I find that the present petition is only an attempt by the petitioner to delay the final adjudication of the pending trial.

14. Finding no illegality, the present petition is *dismissed*.

(VINOD S. BHARDWAJ)
JUDGE

04.09.2025*Mangal Singh*

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No