Alka Kaushal v. Avtar Singh Dhindsa, (Punjab And Haryana) ***: Law Finder Doc Id # 2638191***

**PUNJAB AND HARYANA HIGH COURT**

Before:-Deepak Manchanda, J.

CRR-2410 of 2017 (O&M), CRR-2408 of 2017 (O&M). D/d. 02.06.2023.

Alka Kaushal - Petitioner

Versus

Avtar Singh Dhindsa and Another - Respondents

CRR-2413 of 2017 (O&M), CRR-2415 of 2017 (O&M).

Sushila Badola - Petitioner

Versus

Avtar Singh Dhindsa and Another - Respondents

Mr. R.S. Rai, Senior Advocate with Mr. Gurmohan Singh Bedi, Advocate for the petitioner.

Mr. G.S. Ghuman, Advocate for respondent No.1.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab for State-respondent No.2.

**Criminal Procedure Code, Section 313 - Negotiable Instruments Act Section 138**

**Cases Referred :-**

Ashok Baugh v. Kamal Baugh, 2015 (4) JCC (NI 269)

Asim @Munmun @ Asif Abdulkarim Solanki v. The State of Gujarat, SLP (Crl.) 8087 of 2019

Avtar Singh Dhindsa v. Sushila Badola, dated 07.08.2008

Basalingappa v. Mudibasappa, (2019) 5 SCC 418

Bir Singh v. Mukesh Kumar

Brahmjit Singh v. State, 1991 SCC OnLine Del 727

Daungarshi Madanlal Zunzunwala v. M/s Deviprakash Omprakash Bajoria, 1985 SCC OnLine Bom 322

G. Pankajakshi Amma v. Mathai Mathew (dead) through LRs, (2004) 12 SCC 83

Girdhari Parmanand Motiani v. Vinayak Bhagwan Khavnekar, 2015 SCC OnLine Bom 6213

Harjinder Singh v. Shri Bahgwan, 2013 (18) RCR (Criminal) 413

HMT Watches Ltd v. M.A. Abida, 2015 (3) JT 216

Jain P. Jose v. Santosh

John K. Abraham v. Simon C. Abraham, (2014) 2 SCC 236

K. Subramani v. K.Damodara Naidu, (2015) 1 SCC 99

Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283

Kuldeep Singh v. State of Punjab, 2022 (2) R.C.R.(Criminal) 965

M/s Laxmi Dyechem v. State of Gujarat, 2012 (6) Recent Apex Judgments (R.A.J.) 339

Monica Sunit Ujjain v. Sachu M. Menon, High Court of Bombay CRR No. 394 of 2015

Pravati Rani Sahoo v. Bishnupada Sahoo, (2002) 10 SCC 510

Pulsive Technologies P. Ltd. v. State of Gujarat, 2015 CriLJ 283

R. Vijayan v. Baby, 2011 (4) RCR (Civil) 834

Rangappa v. Sri Mohan, (2010) 11 SCC 441 : 2010 CriLJ 2871

State of A. P. v. Yelamati Venkaataraju, (2001) 10 SCC 728

State of Himachal Pradesh v. Nirmala Devi, 2017 (2) RCR (Criminal) 613

T. Vasanthakumar v. Vijaykumari, (2015) 8 SCC 378

T.P. Murugan (Dead) Thr. Lrs v. Bojan, 2018 AIR (SC) 3601

Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735

Tomaso Bruno v. State of UP, (2015) 7 SCC 178

Unique Infoways Pvt. Ltd v. M/s MPS Telecom Private Limited, 2019 (4) R.C.R. (Criminal) 5

Vijay v. Lakshman

Vipul Kumar Gupta v. Vipin Gupta, 2012 SCC OnLine Del 4384

JUDGMENT

**Deepak Manchanda, J.** - This judgment shall dispose of a batch of four petitions, i.e. CRR No.2410 of 2017, CRR No.2413 of 2017, CRR No.2415 of 2017 and CRR No.2408 of 2017, which arise out of the impugned judgment dated 06.07.2017, passed by the Additional Sessions Judge, Sangrur involving common question of facts and law, whereby the appeals preferred by the petitioners against the impugned judgment of conviction and order of sentence dated 27.11.2015, passed by the Judicial Magistrate 1st Class, Malerkotla, passed order under Section 138 of Negotiable Instruments Act awarding 02 years sentence alongwith a compensation to the tune of double the amount of cheque in favour of complainant/respondent No.1 were dismissed. Hence, the facts are being considered from CRR No.2410/2017 for adjudication of the petitions mentioned above.

2. The outlined facts emanated from the pleadings are that respondent No.1 initially filed a complaint under Section 138/142 of the Negotiable Instruments Act (hereinafter referred to as 'Act' for the sake of brevity) before the Court of Additional Chief Metropolitan Magistrate, Delhi titled as

***"Avtar Singh Dhindsa v. Sushila Badola and others***", for non-realization of cheque No.773309 dated 07.08.2008 for a sum of Rs.75 lakhs allegedly issued by the petitioner(s), payment of which on its presentation was stopped on 09.10.2007. In the said case, a compromise for a total sum of Rs.1 crore was arrived at between respondent No.1/complainant and accused/petitioners. In pursuance to the said compromise, from the joint account the petitioner(s) issued four postdated cheques bearing Nos. 200455 dated 15.12.2010, 200456 dated 15.06.2011, 200457 dated 15.06.2011, 200458 dated 15.09.2011, for a sum of Rs.25 lakhs each, all drawn on the Nanital Bank Ltd., P-37, Pandav Nagar, Patparganj, Delhi-91, which were duly signed by the accused/petitioner(s) and in lieu of said compromise, respondent No.1 withdrew the complaint qua cheque No.773309 from the Court of Chief Metropolitan Magistrate, Delhi. Thereafter respondent No.1 presented cheque No.200456 dated 15.06.2011 and cheque No.200457 dated 15.06.2011 of Rs. 25 lakhs each for encashment, but the same were returned unpaid with the remarks "payment stopped by drawee". Being aggrieved, respondent No.1 sent a legal notice dated 22.12.2011, which was duly received by one of the petitioner(s) and replied. Further, despite receiving notice when the payment was not made, respondent No.1 filed separate complaints under Section 138 of Negotiable Instruments Act, bearing Complaint No.64 of 2011 and Complaint No.24 of 2012 against petitioners Sushila Badola and Alka Kaushal, which were allowed vide judgment dated 27.11.2015, passed by Judicial Magistrate 1st Class, Malerkotla, whereby the petitioner(s) were held guilty and convicted under Section 138 of the Negotiable Instruments Act, and were sentenced to undergo rigorous imprisonment for 2 years along with compensation to the tune of double of the amount of the cheque. Thereafter, the aforesaid judgment of conviction and order of sentence were assailed by way of filing 02 separate appeals by each of the accused/petitioners there being 2 cheques in question, issued by the petitioners from a joint account, before the Additional Sessions Judge, Sangrur which have been dismissed by upholding the conviction and order of sentence vide impugned judgment dated 06.07.2017. Now the aforementioned impugned judgments, have been challenged by way of filing above mentioned four Revision Petitions.

3. Learned Senior counsel appearing on behalf of the petitioner(s) has contended that the Courts below have grossly erred in reading the facts and law and have overlooked the material evidence on record which resulted into dismissal of appeals filed by the petitioners, simplicitor relying upon the concocted story, which had been coined by the complainant/respondent No.1 referring to a friendly loan of Rs. 75 lakhs between the period from 2004 till 2008. Learned Senior counsel has further contended that respondent No.1 has failed to disclose the details of the said loan amount whereas, as per him the entire amount was given by way of cash which is not permissible in view of the provisions of the Section 269SS of the Income Tax Act, where no document by way of a promissory note, a negotiable instrument or any deed etc. was created, therefore, the same is not legally enforceable debt. Moreover, there is no statutory compliance of Section 138/139 of the Act where no statutory demand notice was received by the petitioners. Learned Senior counsel has submitted that the plea of settlement qua cheque No.773309 dated 07.08.2008 is not worth believable as it was wrongly portrayed by respondent No.1 that the complaint before trial Court in Delhi had been withdrawn only on account of settlement for a total sum of Rs. 1 Crore against the outstanding amount of Rs.75 lakhs where four post-dated cheques of Rs. 25 lakhs each were issued, but in the absence of any document/agreement indicating the compromise the same can be easily termed as a calculated ploy by respondent No.1. Learned Senior counsel has further submitted that both the Courts below have wrongly placed heavy reliance upon the fact that the ingredients of Section 138 of the Act are complete as the petitioner(s) have not denied their signatures on the cheques in question, but on the contrary, the Courts below failed to appreciate that the cheques were actually in the custody of one Sh.Prashant Mamgain as security cheques on account of the

business relationships between him and the petitioners, where respondent No.1 has been used as a tool by the said person to falsely implicate the petitioners. He further added that as per Section 138 of the Act, it is required to prove that the cheques in question were issued in discharge of legally enforceable liability, which respondent No.1 utterly failed to prove and has referred to the cross-examination of respondent No.1, who appeared as CW-1, and the same reveals that neither any books of accounts were maintained, nor the said loan was even reflected in Income Tax Returns, as no documentary proof of his annual income from agriculture/export business was proved, even up to the year 2009 no Income Tax Returns were filed and argued that still the Courts below wrongly passed the judgments in favour of respondent No.1. Learned Senior counsel has also argued that the petitioner(s) in the statement under Section 313 of Cr.P.C. specifically denied any relationship or compromise with respondent No.1 and despite this fact, both the Courts accepted the cross-examination version of respondent No.1, which resulted into harsh punishment of 2 years rigorous imprisonment along with the amount of compensation, which the petitioner(s) are not liable to pay as the same cannot be termed as legally enforceable debt, and has prayed for setting aside the impugned judgments by allowing the present petitions. To support his contentions, learned Senior counsel has relied upon the judgments in cases titled as ***"Daungarshi Madanlal Zunzunwala v. M/s Deviprakash Omprakash Bajoria & Anr." [1985 SCC OnLine Bom 322]***; " ***Pravati Rani Sahoo & Anr. v. Bishnupada Sahoo [(2002) 10 SCC 510]***; "***State of A. P. v. Yelamati Venkaataraju" [(2001) 10 SCC 728]***; "***Brahmjit Singh & Anr. v. State [1991 SCC OnLine Del 727]***; "***G. Pankajakshi Amma & Ors. v. Mathai Mathew (dead) through LRs & Anr." [(2004) 12 SCC 83]***; "***Monica Sunit Ujjain v. Sachu M. Menon" [High Court of Bombay CRR No. 394 of 2015]***; "***Girdhari Parmanand Motiani v. Vinayak Bhagwan Khavnekar" [2015 SCC OnLine Bom 6213]***; ***"Vipul Kumar Gupta v. Vipin Gupta" [2012 SCC OnLine Del 4384]***; ***"John K. Abraham v. Simon C. Abraham & Anr." [(2014) 2 SCC 236]***; ***"K. Subramani v. K.Damodara Naidu" [(2015) 1 SCC 99]***; ***"Basalingappa v. Mudibasappa; [(2019) 5 SCC 418]***; ***"Ashok Baugh v. Kamal Baugh & Anr." [2015 (4) JCC (NI 269)]***, ***"Tedhi Singh v. Narayan Dass Mahant" [(2022) 6 SCC 735]***; ***"Tomaso Bruno v. State of UP" [(2015) 7 SCC 178]***, ***"Vijay v. Lakshman & Ors."***; and ***"Asim @Munmun @ Asif Abdulkarim Solanki v. The State of Gujarat [SLP (Crl.) 8087 of 2019]***.

4. Per contra, learned counsel for respondent No.1 has submitted that both the Courts below have rightly appreciated the evidence led by respondent No.1 to prove cheques in question, which were issued by the petitioner(s) to discharge the legally enforceable debt and the onus was on the petitioners to prove that how respondent No.1 had come in possession of the said cheques, which they failed to prove. Learned counsel has further submitted that respondent No.1 appeared as CW-1 and tendered his affidavit as Ex.CW-1/A, who deposed unequivocally to endorse that after the withdrawal of the complaint under Section 138 of the Act from the Court of Chief Metropolitan Magistrate at Delhi, both the parties arrived at a mutual settlement of Rs. 1 crore, where four post dated cheques duly signed by the petitioners were handed over to respondent No.1, but while on presentation, the cheques in question were dishonoured. Learned counsel for respondent No.1 has argued that the plea of the petitioner(s) before this Court regarding the disputed cheques which were projected as security cheques with one Prashant Mamgain is not tenable. He has also argued that the ingredients of Section 138 of the Act are fully satisfied and the presumption under Section 139 of the Act arises, and, now the onus is on the petitioner(s), who have no explanation to justify, how the cheques in question reached the complainant/respondent No.1 which draws an adverse inference against the petitioner(s) and submits that the petitioner(s) have been rightly convicted and sentenced by both the Courts below. Therefore, the present petitions deserve to be dismissed which are without any merits. To support his contentions, learned counsel relies upon the judgments in cases titled as ***"HMT Watches Ltd v. M.A. Abida and Anr." [2015 (3) JT 216]***, ***"Pulsive***

***Technologies P. Ltd. v. State of Gujarat and others" [2015 CriLJ 283]***, ***"Rangappa v. Mohan" [2010 CriLJ 2871]***, ***"M/s Laxmi Dyechem v. State of Gujarat and others" [2012 (6) Recent Apex Judgments (R.A.J.) 339]***, ***"T. Vasanthakumar v. Vijayakumari" [2015 (8) SCC 378]***, ***"Unique Infoways Pvt. Ltd and Ors. v. M/s MPS Telecom Private Limited" [2019 (4) R.C.R. (Criminal) 5]***, ***"Harjinder Singh v. Shri Bahgwan" [2013 (18) RCR (Criminal) 413]***, ***"T.P. Murugan (Dead) Thr. Lrs v. Bojan"[2018 AIR (SC) 3601]***, ***"R. Vijayan v. Baby & Anr." [2011 (4) RCR (Civil) 834]*** and ***"Kuldeep Singh v. State of Punjab and another" [2022 (2) R.C.R.(Criminal) 965]***.

5. I have heard learned counsel for the parties and have perused the material available on record. To test the arguments raised by the learned Senior counsel for the petitioner(s), it is felicitous to discuss Sections 138/139 of the Act, which are relevant to the issue, pending before this Court for adjudication. The said Sections read as under:-

> **138. Dishonour of cheque for insufficiency, etc, of funds in the accounts**
>
> 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 provision 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.
>
> **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."

6. A reading of the aforesaid Sections and bare perusal of the record coupled with concurrent findings recorded by both the Courts below would show that the signatures on the cheques and the execution of the same are proved. Hence, there is a statutory presumption that the cheques were issued for legally enforceable debt. Learned Senior counsel for the petitioner(s) argued that

respondent No.1 had no financial capacity to advance such a loan as same was neither reflected in income tax return, nor such an amount as stated by him was mentioned in his cross-examination, but legally the onus was on the petitioner(s) to prove that respondent No.1 gave a false statement in the Court and could not lend such an amount, however, the petitioner(s) failed to do so. Similarly, the appellate Court also specifically observed that the petitioner(s) were at liberty to summon the bank records of respondent No.1/complainant in their defence evidence to prove that he had no means of advancing such a huge amount, but actually despite having the opportunity, respondent No.1 was not cross-examined which is the missing link in the present case. Another plea raised by the learned Senior counsel denying the compromise between the parties of Rs. 1 crore is contrary to the evidence on record, as the complaint filed before the Additional Chief Metropolitan Magistrate, Delhi was withdrawn by the respondent No.1/complainant only on a mutual understanding/compromise, otherwise respondent No.1/complainant did not have any reason to withdraw the same. Moreover, this Court cannot lose sight of the issue that the said compromise was supported by handing over four Post dated cheques out of which, two were dishonoured and the same are the subject matter of abovementioned revision petitions. The pleading of the petitioner(s) projecting the cheques in question as security cheques with Prashant Mamgain also does not hold any ground as it was incumbent upon the petitioner(s) to prove that they had some business dealings or financial transactions with the said person, however, this fact has not been proved on record. Whereas as per evidence and findings recorded by both the Courts below, factually, it is the petitioner(s) who intimated the bank to stop the payment and there is nothing on record to show that the disputed cheques were security cheques with Prashant Mamgain. Hence, defence of the petitioner(s) regarding the connivance of Prashant Mamgain with the complainant/respondent No.1 is an afterthought. Another fact which needs to be considered is that there is no explanation as to how those cheques were issued in the name of respondent No.1 where entire defence plea, legal notice, statement under Section 313 Cr.P.C. of the petitioner(s) as well as evidences available on record are silent on this point.

7. The findings recorded by both the Courts below are concurrent regarding issuance of the cheques and signatures on the same which have not been rebutted by the petitioner(s).

8. The relevant findings of the trial Court are reproduced as under:-

> 11 To substantiate the allegations of the complaint, the complainant himself has stepped into the witness box as CW-1 and has deposed as per the case set out in the complaint. The counsel for the accused has cross-examined the complainant at considerable length but except minor discrepancies, which are bound to occur with the passage of time, nothing material could be extracted from his cross-examination. Moreover, the only discrepancy in the statement of the complainant is with regard to the nature of the financial assistance given to the accused. During his cross-examination the complainant specifically denied that the aforesaid amount was a financial assistance and termed it as a friendly loan whereas in the complaint filed before the Delhi Court he specifically mentioned that the amount was a financial assistance in view of the lucrative offers of investing the same in the TV serial. In the opinion of the court, the said discrepancy is not relevant as the complainant has specifically deposed that the cheque in question was issued by the accused out of their joint account in lieu of the compromise effected before the Delhi Court. Moreover, both the accused has not denied their signature over the disputed cheque. Therefore, the execution of cheque stands proved on record from the evidence of the complainant.
>
> 12 Section 139 of the Negotiable Instrument Act raises the presumption in favour of the holder

of the cheque which reads as under:-

"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, or any debt or other liability."

13 In these circumstances, an initial presumption to the effect that the cheque has been issued in discharge of the liability has to be raised in favour of the holder of the cheque and it is for the accused to dispel the initial presumption in favour of the complainant.

14 Per contra, accused in order to rebut the presumption which lies in favour of the complainant, examined DW1 Sheikh Manna (Record keeper from Nainital bank), who proved on record documents Ex.D1 to Ex.D4. Ex.D1 is the authority letter by the Nanital bank authorising the DW1 to produce the record before the Court. Ex.D2 certified copy of bank computer system which shows that the payment in respect of cheque no.773309 (which is subject matter of the complaint under the act, before the Delhi Court) was stopped on 09.10.2007. Ex.D3 is also the certified copy of bank computer system showing the same thing. Ex.D4 is the statement of account. In his cross-examination DW1 stated that he has not brought the stop payment intimation letter issued by the accused in the Court. He further stated that he cannot tell the reason for stopping the payment qua cheque no.773309 by the accused.

15 I have gone through the testimonies of DW1. It is undisputed fact that cheque no.773309 dt.07.08.2008 (subject matter of complaint under the act before the Delhi Court) and cheque no.200457 Ex.C1 were issued out of the account no.20011157, which is operated by the accused. In order to rebut the presumption raised under the act the accused have taken the plea in their statement U/s.313 Cr.P.C. that the present cheque alongwith some other cheques was given by them to one Parshant Mamgain, with whom they are having some financial transactions. But in her reply to the legal notice, in another connected file no.64, issued by the complainant the accused no.1, namely Sushila Badola taken the plea that the cheque in question was misplaced and instructed her banker not to honour the same. This is contradictory plea taken by the accused and both the pleas cannot stood at the same time. Secondly, as per the plea of the accused the cheque in question was given to Parshant Mamgain as a security of the pronote and receipt cheques as she was having some financial transaction with him. Mr. Parshant Mamgain also filed a complaint U/s.138 of the act against the accused no.2 before the Delhi Court. But that complaint was filed by the Parshant Mamgain in respect of cheque no.872618 dt.05.10.2007. This fact is itself clear from the perusal of Photostat copy of complaint filed by the Parshant Mamgain against the accused no.2. Meaning thereby, the plea of the accused that the cheque in question was given to the Parshant Mamgain as a security cheques is falsified. Had it been the case, then the complaint filed by the Parshant Mamgain should have been regarding one of the security cheques alleged to be issued by the accused in favour of the present complainant in lieu of the compromise effected before the Delhi Court. Further, the accused did not mention the date on which the cheques was given by her to the Parshant Mamgain as security cheques. But drawing natural inference from the complaint filed by Parshant Mamgain against the accused no.2, on 07.1.2008 in which reference to the financial transaction with the accused no.2 was made the cheques should have been issued by the accused no.2 before 07.1.2008 that is before the filing of the complaint by Parshant Mamgain. But surprisingly, perusal of the cheque book issue register shows that the cheque book out of which the present cheque no.200457 Ex.C1 was issued, was issued to the accused Sushila Badala on 17.1.2009. Thus, it is not possible that

the present cheque was given by the accused no.2, to the Parshant Mamgain as a security cheques. The accused have taken the plea that the complainant failed to prove the existence of legally enforceable debt qua cheque no.773309, which is the subject matter of the litigation before the Delhi Court. But as per the presumption raised under the act the holder of the cheque is taken to be holding the cheque against the legally enforceable debt and it is for the accused to dispel this presumption. It is not for the complainant in the present case to prove his paying capacity or the existence of legally enforceable debt qua cheque no.773309 or qua the present cheque. It is for the accused to explain as to how the complainant is holding the cheque issued from the account of accused. Further the plea taken by the accused that the present complaint is barred by limitation does not hold any ground because the cheque no.200457 dt.15.6.2011 was presented for encashment and was dishonoured vide memo dt.22.11.2011 and the present complaint is filed well within the period of limitation. Further this controversy was already been decided by the Hon'ble High Court of Punjab & Haryana in order dt.24.2.2014. Though, it was forcefully argued by the ld.counsel for the accused that the complainant failed to specify the amount of loan taken by the accused in complaint filed before the Delhi Court as well as in the present complaint but this fact in itself does not rebut the presumption raised under the act in favour of the complainant. In the present case the accused has taken the plea that the cheques in question was given by them to Parshant Mamgain in relation to some financial transaction as a security cheques. In this situation in order to repel the presumption raised under the act it becomes incumbent upon the accused to explain what type of financial transaction they are having with the Parshant Mamgain and at what point of time they have issued the cheque in question to the Parshant Mamgain as a security cheques. Surprisingly, these vital details were not disclosed by the accused before the Court. Another, argument taken by the ld.counsel for the accused that the complainant failed to prove on record the alleged compromise with the accused before the Delhi Court. On this point I'm of the view that the accused is not required to prove the circumstances under which he is holding the cheque of the accused. It is sufficient on the part of the complainant if he just explained as to how the cheque was issued to him by the accused. Further the plea that the complainant failed to explain as to why the accused will compromise for an amount of Rs.1 crore in relation to a criminal complaint filed for 75 lakh. On this point I'm of the view that it is not out of the course of the nature that when a criminal complaint is filed generally accused Agrees to compromise for higher amount for avoiding his conviction and also taking in view the interest on the borrowed amount. Therefore, complainant need not explain this fact. Further, so far as the question of proving on record writings dt.04.11.2008 Ex.CW1/B is concerned the responsibility of the same is upon the shoulder of the accused because he denied that the signature is not that of her. So far as other contentions of ld.counsel for accused regarding nonreceipt of notice regarding litigation before the Delhi Court is concerned the same does not have any effect on the present complaint. Because in the present complaint that would have already appeared and he is having the liberty to make the payment even after his presence before the Court.

16 On the basis of above discussion, this court is of the confirmed opinion that the accused has failed to rebut the presumption enshrined U/s.139 of the Negotiable Instrument Act and this Court has no hesitation to conclude that the cheque was given by both the accused out of their joint account in discharge of their liability and the same is not misused by the complainant. Hence, this point is decided in favour of the complainant and against the accused."

9. The findings recorded by the appellate Court endorsing the judgment and order of conviction vide impugned judgment dated 06.07.2017, are also reproduced as under:-

26. From the above discussions, in the present case ingredients of the Section 138 of the Act are fully satisfied. Once the ingredients are satisfied, then presumption u/s 139 arises and the onus is on the accused regarding his innocence. The appellant/accused has failed to give any plausible or reasonable justification in his evidence as to how the cheques in question reached the complainant which draws the adverse influence against the accused as per section 139 of Act. Section 139 of Act is read as under:

"Section 139 of the Act reads as under:

"139. Presumption in favour of holder - It shall 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."

27. Thus, the cheque, in question has to be taken to have been issued by the appellant in discharge of a legal and subsisting liability because once ingredients of Section 138 of the Act are satisfied, presumption has arisen in favour of the respondent in terms of Section 139 of the Act it was for the accused-appellant to rebut that presumption but he failed to do so.

28. I have gone through the judgment of the learned trial court, which is a detailed and well reasoned judgment in the eye of law. The order of conviction of the learned trial court is upheld. On point of sentence, the learned counsel for the appellants have stated that both the appellants are ladies. Appellant Sushila Badola is an old lady and so, lenient view be taken and has requested to release the appellants on probation. Though it is admitted fact that the appellants are ladies, but merely being ladies they cannot escape the clutches of the law just because of their gender as the law is equal for all. Moreover, it is admitted fact that Sushila Badola is an old aged lady, but the learned counsels have not placed on record any document to show that she is suffering from any ailment. Otherwise also, heavy amount is involved in the present case. If only the gender and age are considered in sentencing part, then it will give a wrong signal to the society as the ladies and old age people will be used as a tool for committing offences, so in view of my discussion no lenient view is required to be taken against the appellants in this case and request for releasing the appellants on probation is declined.

29. As a result of the above discussion, the judgment of conviction and order of sentence dated 27.11.2015 are upheld. The appeal is dismissed being devoid of merit. Trial court record along with copy of the judgment be sent back forthwith. Appeal file be consigned to the record room"

10. Both the Courts below have found the petitioner(s) guilty of the offence under Section 138 of the Act and a perusal of the aforesaid impugned judgments reveals that after appreciating the entire evidence, it was concluded that the petitioner(s) failed to prove their case and presumption arose in favour of respondent No.1 in terms of Section 139 of the Act, as the petitioner(s) failed to rebut the same. Furthermore, the petitioner(s) were held guilty by the trial Court of an offence under Section 138 of the Act by passing a detailed and well-reasoned judgment and ordering conviction and sentence which was upheld by the appellate Court. It is a settled proposition of law that in the revisional jurisdiction this Court is to examine whether there is any perversity in the judgments of the Courts below while appreciating the evidence.

11. Furthermore, it is specifically prayed by the petitioner(s) in para No.3 at page 19-20 of the petition that in case, this Court does not agree with the contentions as raised by the petitioner(s), then the amount of recovery as well as the quantum of sentence as awarded be reduced. The said prayer is contrary to the submissions made by the petitioner(s) before this Court which seems to be

consciously well-guarded with the scope of clemency and reflects that the petitioner(s) also somewhere realized that both the Courts below have rightly appreciated the evidence and decided against the petitioner(s), that is why, a prayer of mercy at the end, overriding the entire pleadings, has been made with open eyes. This Court has also gone through various judicial pronouncements cited by both parties and finds that the case laws supplied by the petitioner(s) do not enhance much support in their favour whereas on the other hand, the laws cited by respondent No.1 are much convincing.

12. The Hon'ble Apex Court in the case of ***'Jain P. Jose v. Santosh & Anr.'*** date of decision 10.11.2022 while dealing with Section 139 of the NI Act has held as under:-

" xxx

5. In the aforesaid factual background, we do not think that the High Court was right in holding that the onus was not on the respondent to show that the debt was neither due nor payable sections 118 and 139 of the N.I. Act, read:

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

(a) 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;

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

(c) as to time of acceptance - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer -that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps -that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course - that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

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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.

6. Referring the Sections of the N.I. Act, a three Judges Bench of this Court in ***"T.***

***Vasanthakumar v. Vijaykumari" (2015) 8 SCC 378***, has held:

"9. Therefore, in the present case since the cheque as well as the signature has been accepted by the accused-respondent, the presumption under Section 139 would operate. Thus the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not, return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence."

7. This decision, refers to an earlier judgment of this Court in ***"Rangappa v. Sri Mohan" (2010) 11 SCC 441***, which elucidating on the presumption under section 139 of the N.I. Act, observes that this includes a presumption that there exists a legally enforceable debt or liability. However, the presumption under section 139 of the N.I. Act is rebuttable and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

8. A recent decision of a three Judges Bench of this Court in ***"Kalamani Tex and Another v. P. Balasubramanian" (2021) 5 SCC 283***, examines the scope and ambit of the presumption under sections 118 and 139 of the N.I. Act, to hold:

"14. Once the 2nd appellant had admitted his signatures on the cheque and the deed, the trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial Court fell in error when it called upon the respondent complainant to explain the circumstances under which the appellants were liable to pay. Such approach of the trial Court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law.

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17. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite ***"Bir Singh v. Mukesh Kumar"***, where this court held that:

"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."

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13. Given the above discussion, impugned judgments passed by the Courts below are well reasoned and justified, where this Court does not find any perversity in the same which were passed after appreciating the entire evidence. Further, during the pendency of these revision petitions, as per record, vide order dated 14.07.2017 while hearing the application of the petitioners praying for

suspension of sentence, this Court directed the petitioner(s) to deposit Rs. 50 lakhs each with the trial Court to show their bona fide, where the trial Court was directed to convert the same into a fixed deposit in some nationalized bank to save loss of interest to any of the party who would be entitled to the same. In compliance with the said order dated 14.07.2017, the petitioner(s) deposited the same vide Demand Draft No.255844 dated 25.7.2017 drawn at State Bank of India, Versova, Mumbai and Demand Draft No.008850 dated 25.7.2017 drawn at HDFC Bank, Goregaon West-Jawahar Nagar, Mumbai, with the trial Court which was converted into FDR, and accordingly vide order dated 04.08.2017, the sentence of the petitioner(s) was suspended during the pendency of the present revision petitions. Now another issue which draws the attention of this Court is that whether in the light of specific prayer made in para No.3 at page 19-20 of the petition, the petitioner(s) deserve some leniency being ladies, where petitioner, namely, Sushila Badola who is a senior citizen and petitioner, namely, Alka Kaushal having a special child to look after and have already deposited the awarded compensation during the pendency of revision petition in terms of order dated 14.7.2017 and are facing the agony of trial since 2011. The Hon'ble Supreme Court in the case ***'State of Himachal Pradesh v. Nirmala Devi, 2017 (2) RCR (Criminal) 613'***, has considered the issue of sentencing in detail and has crystallized certain principles. The same are reproduced hereinbelow:-

> 20. The following principles can be deduced from the reading of the aforesaid judgment:-
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> (i) Imprisonment is one of the methods used to handle the convicts in such a way as to protect and prevent them from committing further crimes for a specific period of time and also to prevent others from committing crimes on them out of vengeance. The concept of punishing the criminals by imprisonment has recently been changed to treatment and rehabilitation with a view to modify the criminal tendencies among them.
>
> (ii) There are many philosophies behind such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing.
>
> (iii) Notwithstanding the above theories of punishment, when it comes to sentencing a person for committing a heinous crime, the deterrence theory as a rationale for punishing the offender becomes more relevant. In such cases, the role of mercy, forgiveness and compassion becomes secondary.
>
> (iv) In such cases where the deterrence theory has to prevail while determining the quantum of sentence, discretion lies with the Court. While exercising such discretion, the Court has to govern itself by reason and fair play, and discretion is not to be exercised according to whim and caprice. It is the duty of the Court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is the protection of the society and a legitimate response to the collective conscience.
>
> (v) While considering as to what would be the appropriate quantum of imprisonment, the Court is empowered to take into consideration mitigating circumstances, as well as the aggravating circumstances."

14. The concern of the legislature is obvious, where Provisions were inserted for inculcating greater faith in banking transactions needed more teeth so that cases involving dishonour of cheques are reduced. It is, thus, apparent that deterrence and restoration are the principles to be kept in mind

for sentencing. At the same time, this is the fact that the offence under Section 138 of the Act is quasi-criminal and Section 147 of the Act makes the offence compoundable notwithstanding anything contained in the Code of Criminal Procedure, 1973. The order of the sentence is on record as maximum sentence of rigorous imprisonment for two years has been imposed on the ground that the offence is socio-economic. No other consideration has been weighed with the trial Court. Keeping in view the principle of restoration, compensation of payment of the cheque amount has been awarded. The award of compensation is justified and reflects a judicious exercise of mind which has already been deposited by the petitioners and keeping in view the Mitigating circumstances of the petitioner(s) being a senior citizen and having a special child to take care of and also going through the protracted trial of 12 years, this Court is inclined to accept the prayer for showing leniency towards them.

15. In the light of above discussion, the revision petitions are dismissed and conviction is maintained alongwith payment of compensation. However, sentence is reduced to the period already undergone by them, as awarded by the trial Court. Liberty is granted to respondent No.1/complainant to avail appropriate remedy available under law for recovery/release of compensation as awarded by the trial Court, if so advised after receiving the certified copy of this judgment.

16. All pending miscellaneous application(s), if any, shall also stand disposed of.

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