

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Jasjit Singh Bedi****Date of Decision: 31st May 2024**

CRIMINAL REVISION NO. 1951 OF 2023

CRM-36623-2023 in/and CRR-1951-2023 (O & M)

Pushpa Bahmni ...Petitioner**Versus****Jolly and anr. ...Respondent(s)****Legislation:**

Section 138 of the Negotiable Instruments Act, 1881

Section 313 of the Cr.P.C.

Subject: Criminal revision petition challenging the conviction and sentence under Section 138 of the Negotiable Instruments Act for dishonoring a cheque issued as part of a settlement agreement related to the sale of a petrol pump.

Headnotes:

Negotiable Instruments Act – Section 138 – Dishonor of Cheque – Criminal Revision against the conviction and sentence by Judicial Magistrate Ist Class, upheld by Additional Sessions Judge – Petitioner entered into an agreement to sell a petrol pump and issued a cheque as part of a settlement – Cheque dishonored due to insufficient funds – Legal notice served but payment not made – Petitioner denied execution of agreement and claimed cheque was lost/misused – Evidence including testimonies and documents (agreement to sell, settlement deed) examined – Petitioner’s multiple contradictory defenses dismissed – Conviction upheld as petitioner failed to rebut the presumption under Sections 118 and 139 of the Act – Revision dismissed. [Paras 1-18]

Role of Petitioner – Evidence Analysis – Held – Petitioner’s multiple contradictory defenses deemed unreliable – Consistent evidence from

respondent No.1 and witnesses corroborating the agreement and settlement deed – Petitioner’s failure to take legal action against alleged misuse of cheque noted – Signatures on crucial documents including agreement and settlement deed verified – Conviction based on substantive evidence and legal presumption under Negotiable Instruments Act. [Paras 14-17]

Decision – Dismissal of Revision Petition – Court finds no merit in the petition – Conviction and sentence under Section 138 of the Negotiable Instruments Act upheld – Petition dismissed due to lack of credible defense and failure to rebut statutory presumption. [Para 18]

Referred Cases:

- Rangappa v. Sri Mohan (2010) 11 SCC 441
- Kumar Exports v. Sharma Carpets (2009) 2 SCC 513
- Hiten P. Dalal v. Bratindranath Banerjee (2001) 6 SCC 16
- M.S. Narayana Menon v. State of Kerala (2006) 6 SCC 39
- Goa Plast (P) Ltd. V. Chico Ursula D’Souza (2004) 2 SCC 235
- K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510
- Krishna Janardhan Bhat v. Dattatraya G. Hegde (2008) 4 SCC 54

Representing Advocates:

Mr. R.S. Randhawa for the petitioner

Mr. Akshay Jindal with Mr. Bhavya Vats for respondent No.1

Ms. Aditi Girdhar, Asstt. A.G., Haryana for respondent No.2

JASJIT SINGH BEDI, J.

The present revision petition is being preferred against the judgment dated 19.08.2023 passed by the Additional Sessions Judge, Karnal whereby the judgment of conviction and order of sentence dated 21/28.11.2016 passed by the Judicial Magistrate Ist Class, Karnal has been upheld.

² The brief facts of the case are that the complaint was filed by the complainant/respondent No.1 (hereinafter referred to be as respondent No.1)

Jolly with the allegations that the accused/petitioner (hereinafter referred to be as the petitioner) no.1 who was the sole proprietor of accused no.2 (M/s H.P. Bahmni Filling Station, HPC Petrol Pump, Nissing), had entered into an agreement to sell an HPC petrol pump outlet with her (respondent No.1) vide agreement to sell dated 06.08.2012 and she (petitioner) had received a sum of Rs.33,25,000/(Thirty Three Lac Twenty Five Thousand) on account of sale of the said petrol pump along with all other rights appurtenant thereto. The said agreement was duly attested by Jai Parkash Sharma, Notary Public, Karnal. However, later on the Hindustan Petroleum Corporation Ltd. terminated the retail outlet agreement dated 07.08.2006 vide order dated 17.07.2013 which was in favor of the petitioner. Accordingly, the petitioner was not able to get the sale deed executed in her (respondent No.1's) favor in pursuance of the agreement in question dated 06.08.2012. Thereafter, the dispute was resolved between the parties and in this regard a settlement/compromise deed was executed on 30.10.2014 at Karnal in the presence of the witnesses. In lieu of the said settlement/compromise deed, being the responsible person of the accused no.2 i.e. H.P.Bahni Filling Station, the petitioner issued a cheque bearing no. 352501 dated 04.11.2014 for an amount of Rs.40,00,000/- drawn at State Bank of India, Model Town, Karnal from her bank account No.32430242580 and assured that the cheque would certainly be honoured when presented for encashment. Accordingly, the respondent No.1 presented the said cheque for encashment. However, the same was returned by the bank with remarks "Funds Insufficient", vide memos dated 07.11.2014. After that, the respondent No.1 served a legal notice dated 14.11.2014 on the petitioner. The respondent No.1 asked her (petitioner) to make the payment of the cheque amount within 15 days from the receipt of the same. However, the petitioner did not give a reply to the said notice and did not pay the cheque amount to the respondent No.1 and therefore, as the petitioner had knowingly and willfully not honoured the said cheque with malafide intention, she had committed an offence under section 138 of the Negotiable Instruments Act.

3. Based on the preliminary evidence led, the petitioner came to be summoned to face Trial under the provisions of Section 138 of the Negotiable Instruments Act.

³ The respondent No.1 examined Kapil Sharma, SWO, SBOP, Panchkula who tendered the statement of account of the respondent No.1 and Amar Chand & the account opening form of the respondent

No.1Ex.CW1/A to Ex. CW1/E & Ex.CW1/D respectively. Sanjay Kumar, Registration Clerk, O/o Sub Registrar, Karnal tendered agreement to sell No.227/4 dated 7.8.2012-Ex.CW2/A and proved the original copy of the same pasted in his register at Sr. No.805.

4 Karan Pal, Clerk, Canara Bank, Kachhwa was examined as CW3 who tendered the attested copy of the account opening form Ex.CW3/A and the computer generated statement of account of Jolly (respondent No.1)- Ex. CW3/B. He further stated that the cheque Ex.CW3/C was presented for collection in his branch and same was dishonoured vide memo Ex.CW3/D. He proved the entry of the same in his cheque return register-Ex.CW3/D and deposed that the original of the entry is Ex.CW3/E.

Jitamrit Datta, Executive Sales Officer, Hindustan Petroleum Corporation, Panipat was examined as CW4 who proved attested copies of the documents i.e. copy of letter of intent for the proposed retail outlet dealership dated 8.8.2005 of Pushpa Bhemni Ex.CW4/A, retail outlet dealership cancellation report-Ex.CW4/B and the letter regarding retail outlet dealership-Ex.CW4/C.

The respondent No.1 herself stepped into the witness box as CW5, tendered her affidavit Ex.CW1/A reiterating the averments of the complaint and tendered & proved the following documents in her documentary evidence:-

Sr. No.	Exhibits	Documents
1.	Ex.C1	Original Cheque
2.	Ex. C2 & Ex.C3	Return memos
3.	Ex. C4	Copy of Legal notice
4.	Ex.C5 & Ex.C6	Postal receipts
5.	Ex.C7	Reply to legal notice

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6.	Ex.C8	State of bank account of complainant
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7.	Ex.C9 & Ex.C10	Agreements
8.	Ex.C11 & Ex.C14	Compromise/settlement deed
9.	Ex. C12	Copy of termination of retail outlet dealership Agreement dated 7.8.2016.
10.	Ex.C13	Agreement

Thereafter, Satish Kumar son of Nathi Ram was examined as CW6. He tendered his affidavit Ex.CW6/A and identified his signatures on the documents Ex.C13 & Ex.C14. Nilesh Shrivastava was examined as CW7 who proved copy of the letter of intent for the proposed retail outlet dealership dated 08.08.2005 of Pushpa Bhamni Ex.CA to Ex. CC (Ex.CW4/A to Ex.CW4/C). During cross-examination, he tendered documents Petrol/ Diesel Dealership Agreement for SC/ST-Ex.DA, show cause notice dealership agreement dated 7.8.2006 (CC-16602500)-Ex.DB, reply to show cause notice reference no.PRO/RET dated 14.06.2013-Ex.DC, File note- Ex.DD dated 3.7.2013-Ex.DD, Regd.AD/By Hand-Ex.DE & Ex.DF, letter dated 22.08.2014-Ex.DG, Arbitrarily Termination of Ro-Dealership Allotted under SC(W)Category-Ex.DH, letter of Termination of Retail Outlet Dealership Agreement dated 7.8.2006-Ex.D1, Receipt-Ex.DJ/1, letter to Regional Manager, HPCL, Panipat- Ex.DK, Field Report of M/s HP Behmni Filling Station, Nissing-Ex.DL, letter of Termination of Retail Outlet Dealership Agreement dated 7.8.2006-Ex.DM, copy of trading area detail-Ex.DM.

5. Thereafter, the counsel for the respondent No.1 closed his, evidence on behalf of the respondent No.1 vide separately recorded statement dated 21.11.2016.

6. The statement of the petitioner was recorded u/s 313 Cr.P.C. While putting the entire incriminating material in the complainant's evidence to her, she pleaded innocence and alleged her false implication by the respondent No.1 in the case in hand. She further stated that she had filed a report with the police regarding the missing of her cheque book and had reported the same to the bank also. In order to avoid giving of accounts of the Petrol

Pump, the respondent No.1 had filed a false complaint against her before Hon'ble High Court.

7. The accused in her defence examined Om Parkash, EHC, 1319, P.P. Sector-9, Karnal who tendered the copy of the rapat Roznamcha dated 10.11.2014, DDR No.5-Ex.D1. Sumit Arora, Tax Assistant, Income Tax Office, Panchkula was examined as DW2. He tendered letter dated 11.05.2016-Ex.D2 & Ex.D3, Computation of total income and Tax thereon for the Assessment year 2011-12 & 2012-13, 2015-16-Ex.D4, Ex.D7, Ex. D14, Ex.D25, Ex.D34, Ex.D35, processing detail of Assessment for the year 2011-12 & 2012-13-Ex.D5 & Ex.D6, Income Tax Return for the year 2011-12-Ex.D8, Ex.D18, Ex.D26, Computation of total income of complainant- Ex.D9, Ex.D19, Ex.D27, Ex.D32, Tax Information Network-forms No.26AS-Ex.D10, Ex.D13, Ex. D20, Ex.23, Form 16-A-Ex. D11, Ex.D12, Ex. D21, Ex. D22, Ex. D28 to Ex.D31, Report regarding missing of cheque hook moved by accused-Ex.D15, application to Chief Manager, SBI. M.T. Karnal-Ex.D16, transaction inquiry-Ex.D17, letter dated 3.6.2016-Ex.D24, application under RTI Act, 2005-Reg. dated 12.09.2016- Ex.D33, Form no. 3CB-Ex.D36, Ex.D37. Suresh Kumar, Sr. Assistant, State Bank of India, Model Town, Karnal was examined as DW3.

Thereafter the petitioner tendered copy of Income Tax Return for the year 2011-12, 2012-13 & 2013-14-Ex.D33 to Ex.D35 and Form- 3CB-Ex.D36 & Ex.D37 and Balance sheet as on 31st March 2013Ex.D38 (Mark-A & Mark-B) vide her separately recorded statements dated 14.9.2016 & 30.09.2016 respectively. Thereafter, she closed her evidence vide separately recorded statements dated 30.09.2016 and 21.11.2016.

8. Based on the evidence led, the petitioner came to be convicted by the Court of the Judicial Magistrate 1st Class, Karnal vide judgment dated 21/28.11.2016 and sentenced as under:-

Offence under Sections	Sentence RI	Compensation	Imprisonment in default of payment of compensation within 03 months

U/s 138 of the N.I. Act	One Year	Rs.40 lacs (cheque amount) within 03 months from the date of order i.e. 28.11.2016	RI 06 months
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9. She preferred an appeal before the Court of Additional Sessions Judge, Karnal and the same came to be dismissed by the said Court vide judgment dated 19.08.2023.

10. The aforementioned judgments are under challenge in the present petition.

7 The learned counsel for the petitioner contends that the Courts below had not correctly appreciated the evidence on record. The respondent No.1 had admitted that she was not able to show from the record that she had made a payment of Rs.33,25,000/- to the petitioner for the purposes of purchase of the petrol pump. The Courts had failed to appreciate that the respondent No.1 had admitted in cross-examination that she did not know who had filled the cheque as the same was not written in her presence. The cross-examination of CW-6/Satish Kumar and the cross-examination of the respondent No.1 (CW-5) had not been appreciated in their proper perspective. The presumption under Section 139 of the Negotiable Instruments Act had been rebutted by the petitioner as she was able to show that the cheque in question was a part of a cheque book which had been lost for which there was a valid DDR entry with the Police Post, Sector 9, Karnal. In fact, the settlement deed (Ex.C11) was a forged document on the face of it and had been prepared on blank signed papers by the respondent No.1. He, therefore, contends that the judgments of the Trial Court and the Lower Appellate Court were liable to be set aside and the petitioner ought to be acquitted of the charges framed against him.

11. The learned counsel for the respondent No.1, on the other hand, contends that the signatures on the cheque stand admitted. The petitioner has given multiple conflicting explanations as to how the cheque got out of the custody of the petitioner. The manner in which the respondent No.1 was handed over the cheque by the petitioner is cogent and believable based on duly signed documents and some documents such as the agreement to sell were registered documents. As the signatures on the cheque stood admitted, a

presumption arose under Section 118 and 139 of the Negotiable Instruments Act that it had been issued in the discharge of a legally enforceable debt which presumption could not be rebutted. Therefore, the conviction was rightly recorded and appeal rightly dismissed. Hence, the present petition was also liable to be dismissed.

8 I have heard the learned counsel for the parties. As per the case set up by respondent No.1, the petitioner had entered into an agreement to sell dated 06.08.2012 for the sale of petrol pump for which she had received a sum of Rs.33,25,000/-. The agreement was duly attested by the Notary Public, Karnal. However, Hindustan Petroleum Corporation Ltd. terminated the retail outlet agreement dated 07.08.2006 vide order dated 17.07.2013. Therefore, the petitioner was not able to execute the sale deed in favour of respondent No.1 in pursuance to the agreement dated 06.08.2012. The dispute was resolved when a settlement/compromise deed was executed on 30.10.2014 at Karnal. In furtherance of the said compromise, the petitioner had issued a cheque for an amount of Rs.40,00,000/- which had been dishonored.

11 The petitioner has not denied her signatures over the cheque in dispute. In fact, she has taken multiple contradictory stands. While replying to the legal notice, she denied that she had entered into an agreement to sell dated 06.08.2012 or that she had received a sum of Rs.33,25,000/-. She averred that only a Power of Attorney has been executed by her in favour of the complainant for the management of the petrol pump. She has further stated that one Ashok Kumar and his wife Sheela who often used to visit her residence had obtained her signatures on blank and printed papers and the said papers had been used to fraudulently prepare the settlement/compromise deed. Her cheque book had been stolen and the cheque in question had been misused by the complainant. Her statement under Section 313 Cr.P.C., however, is to the effect that a cheque book was lost/misused and information regarding the same had been given to the Bank as well as the investigating agency. Yet another version which emerges from the suggestions given by the defence counsel are to the effect that the petitioner had given a cheque book to the respondent No.1 which had been misused. In fact, a perusal of the DDR would reveal that the same refers to the loss of the cheque book and not theft and misuse of the cheque in question. Interestingly, the petitioner has taken no legal action against the respondent No.1 or anyone else for the theft of the cheque or for the misuse of the same. This assumes importance, moreso, when the petitioner herself

is an Advocate. 16. The respondent No.1, however, has proved her case against the petitioner beyond any doubt. It is apparent that the petitioner and respondent No.1 were known to each other for long. It is also admitted that earlier a power of attorney was executed by the petitioner in favour of the respondent No.1 for managing the affairs of her petrol pump. The said power of attorney i.e. Ex.CW2/A. However, it is equally clear that the petitioner, later on has entered into an agreement to sell qua her petrol pump with the respondent No.1 and has received Rs.33,25,000/- from the respondent No.1. Ex.C10 ie the agreement to sell makes it amply clear. The signatures of the petitioner are there on each page. The respondent No.1 has alleged that the petitioner was the sole proprietor of M/s H.P.Bahmni Filling Station and that was the reason she executed an agreement to sell in favour of the respondent No.1. However, her dealership was later on terminated by HPC Limited because of which she could not get the sale deed executed. In order to return the sale consideration, she had issued the cheque in question. From Ex. CW4/A i.e. letter of intent for the proposed retail outlet dealership dated 8.8.2005, it is clear that the petitioner was the proprietor of M/s H.P. Bahmni Filling Station, HPC Petrol Pump, Nissing. Further, as discussed above, from Ex.C10, it is clear that she had entered into an agreement to sell the same with the respondent No.1 and had received Rs.33,25,000/- from him. Further, from Ex.C12 i.e. termination of retail outlet dealership agreement dated 07.08.2006, it is clear that her dealership had been terminated. Not only this, from Ex. C14 i.e. the compromise/settlement deed, it is clear that the petitioner had issued the cheque in question to the respondent No.1 in discharge of her legal liability. The signatures of the petitioner are on all these documents. However, she has denied the same. The complainant/respondent No.1 has proved Ex C14 & Ex.C10 on record. Ex.C14 has been witnessed by Satish Kumar & Ex.C10 has been witnessed by Sh. Mahender Singh, Sh. Nishant Kumar, Sh.Satish Kumar & Sh.Satnam Singh. Since the petitioner has denied the execution of said documents, the respondent No.1 examined CW-6/Satish Kumar who is one of the attesting witnesses of the above-mentioned documents. This witness has very categorically stated that the said documents had been executed by the petitioner. He has identified the signatures of the petitioner on the documents. Therefore, it is established beyond doubt that the said documents had been executed by the petitioner only and she had denied the execution of the same just for the purpose of escaping her legal liability. Moreover, the petitioner was at liberty to get her

signatures compared with the signatures available on Ex.C10 & Ex.C14, through some handwriting & finger print expert. However, for reasons best known to her, she did not do so.

17. In view of the aforementioned discussion, it is clear that the cheque in question has been issued by the petitioner in discharge of her legal liability and she has failed to rebut the presumption as exists in favour of the respondent No.1 as per Section 118 read with Section 139 of the Negotiable Instruments Act. As she has failed to make the payment within the stipulated period after receiving the legal notice, her guilt stands established beyond any doubt.
18. In view of the above, I find no merit in the present petition. Therefore, the same stands dismissed.
19. Since the main petition has been dismissed, no order needs to be passed in the pending criminal miscellaneous application(s), if any.

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