

IN THE COURT OF SH. YUKTI GOYAL,
ADDITIONAL SESSIONS JUDGE, JALANDHAR
(UID No. PB0220)

CIS Case No :	CRR-188-2022
CNR No :	PBJL01012406-2022
Date of Institution :	6.10.2022
Date of Order :	4.9.2023

Anjali wife of Gurmukh Singh son of Shiv Kumar resident of 50-A, New
Baba Budha Ji Colony, near Baba Bua Ji Mandir, Dakoha, Jalandhar.

...Revisionist/accused

Versus

Preet Bharath wife of Balwinder Singh resident of H.No.551, Near Singh
Sabha Gurudwara Dakoha, Jalandhar.

...Respondent/complainant

Criminal revision for setting aside the order dated
9.9.2021 passed by the Court of Sh. Shaminder Pal
Singh, Judicial Magistrate 1st Class, Jalandhar vide
which accused was ordered to be summoned as well as
to set aside the notice of accusation dated 17.8.2022
under Section 138 of Negotiable Instruments Act
served upon the revisionist.

Present: Sh. Gopal Thakur Advocate, Counsel for the revisionist.
Sh. Gurjit Singh Kahlon Advocate, counsel for the
respondent.

JUDGMENT

1. Instant revision-petition has been filed by the revisionist/ accused

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being aggrieved from the order dated 9.9.2021 passed by the Court of Sh. Shaminder Pal Singh, Judicial Magistrate 1st Class, Jalandhar vide which accused was ordered to be summoned and order dated 17.8.2022 vide which notice of accusation under Section 138 of Negotiable Instruments Act was served upon the revisionist.

2. Originally, the complaint under Section 138 of Negotiable Instruments Act was filed by complainant Preet Bharth against accused Anjali, with the averments that accused as well as her husband are the travel agents and as the complainant intended to settle in Italy, accused along with her husband, who are residing in the same area, allured the complainant to send her to Italy along with her husband for an amount of Rs.11,00,000/-. As per the complainant, she made the payment to accused as agreed and handed over all the documents for the purpose of arranging visa for Italy, but the accused failed to arrange visa for her. In order to discharge her legal liability, accused issued cheque bearing No.290904 dated 12.4.2021 for Rs.5,00,000/- drawn on IndusInd Bank, Jalandhar, as part payment, in favour of the complainant. It is further averred that at the time of issuance of the said cheque, accused assured the complainant that the cheque was good for payment and will be encashed on presentation. However, on presentation of the said cheque by the complainant, twice with her Banker i.e. Punjab and Sind Bank, Dashmesh Nagar, Dakoha, Jalandhar, the same was returned dishonoured vide Memos dated 13.5.2021 and 27.5.2021 with the remarks 'Payment stopped by Drawer'.

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Thereafter, despite service of legal notice, accused failed to make payment of cheque in question and consequently, complainant under Section 138 of Negotiable Instruments Act was filed by the complainant against the accused.

3. After appreciating the preliminary evidence led by the complainant, Ld. Trial Court, vide order dated 9.9.2021, ordered for summoning of accused for commission of offence under Section 138 of Negotiable Instruments Act. Then, after appearance of the accused, learned Trial Court, on 17.8.2022, served notice of accusation upon the accused to which accused pleaded not guilty and claimed trial.

4. Aggrieved from the said orders, revisionist/accused filed the present revision petition claiming that the impugned orders passed by the Learned Trial Court are perverse, against the facts and provisions of law. It is further claimed that learned Trial Court did not properly appreciate the evidence as well as law applicable which resulted in miscarriage of justice.

5. Ld. counsel for the revisionist has argued as per the averments raised in the revision petition. Ld. counsel for the revisionist argued that the cheque in question does not bear the signatures of the revisionist and said signatures have been forged on the cheque in question. Learned counsel further argued that there was no legally enforceable debt towards the revisionist and that the cheque in question is the result of misuse and forgery, as the same along with other cheques, has been stolen from the

house of the revisionist by one of the associate of the complainant namely Charanjeet Kaur and even civil suit with regard to same is pending. It is further argued that even complaint is also pending against the complainant. Lastly, Ld. counsel has argued that present revision be allowed and complaint be dismissed.

6. On the other hand, learned Counsel for the complainant has argued that present revision is not maintainable and all the pleas taken by the revisionist are matter of trial. Ld. counsel has further argued that it is too early to jump to the conclusion to the pleas raised by the revisionist and without affording an opportunity to the parties, to lead their respective evidence, these contentions can't be adjudicated. Lastly, it is argued that present revision be dismissed.

7. I have heard Ld. counsel for the parties and gone through case file carefully.

8. Since the present complaint is filed under Section 138 of the Negotiable Instruments Act, 1881, as such, it is quite essential to go through the bare provision, which provides as follows:

Section 138. Dishonour of cheque for insufficiency etc., of fund in the account-. 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 provisions 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.

9. Further, Section 142 of the Negotiable Instruments Act which deals with cognizance of offences provides as follows:

Section 142.- Cognizance of offences-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138.

[provided that the cognizance of the complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period]

(c) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

From bare perusal of Section 138 of Negotiable Instruments Act, the ingredients of the offence as contemplated under the said provision are as under :

1. The cheque must have been drawn for discharge of existing debt or liability.
2. Cheque must be presented within 3 months or within validity period whichever is earlier. The Reserve Bank of India vide Notification No.DBOD.AML BC.No.47/14.01.001/2011-12 dated 4.11.2011 has made the period of validity of a cheque to be three months now. Hence, as of now, the cheque has to be presented within three months from the date on which it was drawn.
3. Cheque must be returned unpaid due to insufficient funds or it exceeds the amount arranged.
4. Fact of dishonour be informed to the drawer by notice within

30 days.

5. Drawer of cheque must fail to make payment within 15 days of receipt of the notice.

Further, as per Section 142 of NI Act, the complaint has to be filed within one month of the date on which the cause of action arises under clause (c) of the proviso to Sec. 138 N. I. Act. [Sec. 142].

10. Now taking into account these ingredients, let find out whether the complainant has prima facie satisfied these ingredients or not? From the perusal of preliminary evidence led on record by the complainant, it is quite clear that the cheque bearing No.290904 dated 12.4.2021 amounting to Rs.5,00,000/- Ex.C1 drawn on IndusInd Bank, Jalandhar was purportedly issued by the accused. Complainant has further produced on record memos dated 13.5.2021 and 27.5.2021 as Ex.C2, and Ex.C3 respectively, vide which cheque was dishonoured on account of 'Drawers signature differs' and 'Payment stopped by drawer'. Complainant further produced on record legal notice dated 22.6.2021 Ex.C4, issued to accused and postal receipt dated 22.6.2021 as Ex.C5. Further, the present complaint was filed on 19.7.2021.

11. It is well settled law that at the time of summoning of accused in a complaint case under Section 138 of Negotiable Instruments Act, the Court has only to consider whether prima facie case against the accused is made out or not? Section 204 Cr.P.C provides that if in the opinion of a Magistrate taking cognizance of offence, there are sufficient grounds of

proceedings, then his summons may be issued. In **Chandra Deo Singh vs. Prakash Chand Bose** (1964) SCR 639 it has been held by Hon'ble Apex court that, “the courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction.”

12. In the present case, taking into account the preliminary evidence led on record by the complainant, all the ingredients of offence under Section 138 of the Negotiable Instruments Act have been prima facie satisfied. Now once all the ingredients have been prima facie satisfied, then the question arises how the Magistrate should proceed in such a complaint. In this regard, Hon'ble Supreme Court of India in case titled as **Indian Bank Association and others vs. Union of India & others** AIR 2014 Supreme Court 2528, issued certain directions, which are as follows:

1. Metropolitan Magistrate/ Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.
2. MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by email address got

from the complainant. Court in appropriate cases, may take the assistance of the police or the nearby court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow up action be taken.

3. Court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

4. Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251, Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145 (2) for recalling a witness for cross examination.

5. Court concerned must ensure that examination in chief, cross examination and re examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complainant and accused must be available for cross examination as and when there is direction to this effect by

the Court.

13. Thus, it is quite clear that Judicial Magistrate on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons. In the present case, after passing of summoning order, accused had appeared and on his appearance, notice of accusation was framed against him.

14. In the considered view of this court, all the pleas which have been taken by the revisionist are matter of trial. During such trial, the complainant has to be given the opportunity to prove his case by leading his evidence and the accused has the right to disprove the same, either with regard to maintainability of complaint or with regard to his other legal defences, either from the statement made by complainant in his cross examination or by way of leading his independent defence evidence. In the considered view of this court, the resort to provision under Section 397 Cr.P.C. under which the present revision is filed can't be a substitute to the trial. As such, once prima facie ingredients of Section 138 of Negotiable Instruments Act are satisfied, then the Ld. Judicial Magistrate should have proceeded as per dictum of Hon'ble Supreme Court of India in case Indian Bank (supra) and to have decided the complaint on merits. Moreover, notice of accusation is just gist of allegations against the accused and notice of accusation need not to contain the entire set of facts.

Further, as already mentioned herein before, complainant has specifically mentioned that in discharge of her liability, accused had issued the cheque in question, which was dishonoured. In the light of these set of facts, the pleas taken by the accused in the present revision are completely matter of trial.

15. In view of discussion made above, there is no ground to interfere with the impugned orders dated 9.9.2021 and 17.8.2022, passed by learned Trial Court. As such, the instant revision-petition is held to be without any merit and the same is hereby dismissed. Parties are directed to appear before the learned Trial court on 18.9.2023 at 10 AM sharp in this regard. Revision file be consigned to the Record Room. Trial court record be returned.

Pronounced in the open Court:
Dated: 4.9.2023

Rajinder Kumar, J.W.

(Yukti Goyal)
Additional Sessions Judge,
Jalandhar (UID No.PB0220)

Yukti Goyal
ASJ/Jalandhar
Dated: 4.9.2023

CNR No: PBJL01012406-2022 CIS No.: CRR 188/2022

Present: Sh. Gopal Thakur Advocate, Counsel for the revisionist.
Sh. Gurjit Singh Kahlon Advocate, counsel for the respondent.

Arguments heard. Vide my separate judgment of even date, the instant revision-petition is held to be without any merit and the same is hereby dismissed. Parties are directed to appear before the learned Trial court on 18.9.2023 at 10 AM sharp in this regard. Revision file be consigned to the Record Room. Trial court record be returned.

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