



SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<u>CRLR/166/2012</u> K.p. Singh --Revisionist Versus State Of Uttarakhand Through District Magistrate --Respondent <u>Hon'ble Alok Mahra, J.</u> There is no representation for the revisionist. Mr. Rakesh Kumar Joshi, A.G.A. and Mr. Manoj Bhatt, Brief Holder for the State of Uttarakhand. Mr. M.K. Ray, Advocate for respondent nos.2 to 4. 2. By means of the present Criminal Revision, the revisionist has assailed the judgment and order dated 28.08.2012 passed by learned Sessions Judge, Udham Singh Nagar in Criminal Appeal No.134 of 2010, whereby the appeal preferred by the revisionist came to be dismissed. The revisionist has also challenged the judgment and order dated 27.08.2010 passed by the learned Judicial Magistrate, Khatima, District Udham Singh Nagar in Criminal Case No. 700 of 2009, whereby he was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and was sentenced to undergo rigorous imprisonment for a period of one month. He was further directed to pay compensation of ₹1,50,000/- to the



			complainant. 3. Briefly stated, the respondent-complainant instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 alleging that the revisionist had issued a cheque for a sum of ₹1,36,800/- in his favour towards discharge of a legally enforceable debt. Upon presentation of the cheque within its validity period, the same was dishonoured by the bank on account of “insufficient funds”. Thereafter, the respondent served a statutory demand notice upon the revisionist within the period prescribed under the Act calling upon him to make payment of the cheque amount. Despite service of the said notice, the revisionist failed to make payment within the statutory period. Consequently, the respondent instituted the complaint under Section 138 of the Negotiable Instruments Act. Upon taking cognizance, the learned trial Court summoned the revisionist. After recording the evidence adduced by the parties and considering the oral as well as documentary evidence available on record, learned Judicial Magistrate, vide judgment and order dated 27.08.2010, convicted the revisionist for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo simple imprisonment for a period of one month. The learned Magistrate further directed the revisionist to pay a sum of ₹1,50,000/- to the complainant by way of compensation. Aggrieved by the aforesaid judgment of conviction and sentence, the revisionist preferred Criminal Appeal No.134 of 2010 before the learned Sessions Judge, Udham Singh Nagar. The learned appellate Court, upon re-appreciation of the evidence on record, dismissed the appeal vide judgment and order dated 28.08.2012, affirming the
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		findings recorded by the learned trial Court. Hence, the present Criminal Revision. 4. A Coordinate Bench of this Court, vide order dated 31.08.2012, enlarged the revisionist on bail during the pendency of the revision, subject to the condition that he shall deposit the compensation amount of ₹1,50,000/-, as awarded by the learned trial Court, in the Nazarat Section of the Court concerned under double lock. Subsequently, another Coordinate Bench of this Court, vide order dated 31.07.2017, modified the earlier order and directed that the amount so deposited by the revisionist shall be kept in a fixed deposit scheme carrying the maximum rate of interest available with the concerned bank. 5. On the previous date of hearing, the matter was referred to mediation with a view to exploring the possibility of an amicable settlement between the parties. However, the mediation proceedings could not fructify as the revisionist failed to appear before the Mediator. The Mediator has reported that Mr. M.S. Bhandari, learned counsel appearing for the revisionist, informed telephonically that despite issuance of several communications, the revisionist remained unresponsive and had failed to maintain contact with his counsel. Consequently, the mediation proceedings could not be conducted and the matter has been reported back to this Court. 6. I have heard the learned counsel appearing for the respondents and have carefully gone through the entire record of the case, including the judgments and orders passed by the learned trial Court as
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		well as the learned appellate Court. 7. From the material available on record, this Court finds that the respondent-complainant has successfully established all the essential ingredients constituting an offence under Section 138 of the Negotiable Instruments Act. The execution and issuance of the cheque by the revisionist have been duly proved. The cheque was presented within its validity period and was dishonoured on account of “insufficient funds”. The statutory demand notice was issued within the prescribed period and was duly served upon the revisionist. Despite receipt of the notice, the revisionist failed to make payment of the cheque amount within the statutory period. Consequently, the statutory presumption available under Sections 118 and 139 of the Negotiable Instruments Act operated in favour of the complainant, and the revisionist failed to rebut the same by leading any cogent and reliable evidence on the touchstone of preponderance of probabilities. The learned trial Court, upon a proper appreciation of the oral and documentary evidence, recorded a well-reasoned finding of guilt against the revisionist. The learned appellate Court independently re-appreciated the entire evidence on record and concurred with the findings recorded by the learned trial Court. 8. It is well settled that the revisional jurisdiction of this Court is supervisory and limited in scope. Unless the findings recorded by the Courts below are shown to suffer from patent illegality, perversity, material irregularity, jurisdictional error, or have resulted in a manifest miscarriage of justice, this Court would not be justified in interfering with concurrent findings of fact recorded by the Courts below. In the
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