

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Revision No.1592 of 2013

Date of Decision:-31.8.2015

Jagjit Singh

...Petitioner

Versus

Davinder Kumar and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Vipul Aggarwal, Advocate
for the petitioner.

Mr. Aditya, Advocate for
Mr. C.L. Verma, Advocate
for respondent No.1.

Mr. Gurinderjit Singh, Deputy A.G., Punjab.

HARI PAL VERMA J.(Oral)

Petitioner Jagjit Singh son of Harbans Singh, resident of House No.B-11/5557, Chowni Mohalla, District Ludhiana has filed the present revision petition against the judgment dated 16.2.2013 passed by learned Additional Sessions Judge, Ludhiana, whereby the respondent-Devender Kumar has been acquitted, though, was convicted by the learned Magistrate vide judgment dated 4.5.2012 and was sentenced to undergo rigorous imprisonment for six months and fine of Rs.1000/- in a

complaint filed under Section 138 of the Negotiable Instruments Act, 1881..

Briefly stated, the petitioner-complainant had filed a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called 'the Act') against the respondent-accused with the averments that accused is known to the petitioner-complainant for the last about 10 years. The respondent-accused was residing in the same locality, where the petitioner-complainant was residing. Their family relations were developed and for having good association with the complainant, the accused demanded a friendly loan of Rs.1,50,000/- from the petitioner-complainant in the month of January 2008 for purchase of new house. He promised to return the amount within six months. Accordingly, the petitioner had given a friendly loan of Rs.1,35,000/- to the respondent-accused as he was not having Rs.1,50,000/-. The said amount was promised to be returned within six months, but the respondent failed to make the payment within the promised time despite various requests. In discharge of his liability towards the petitioner, the respondent-accused had issued a cheque bearing No.726331 dated 4.11.2008 for an amount of Rs.1,35,000/- from his account No.13749 drawn on Punjab National Bank, Shiv Puri, Ludhiana. The complainant was assured that the cheque will be duly honoured on its presentation. However, when the said cheque was sent to the bank for clearance, it was dishonoured vide bank memo dated 5.11.2008 (Ex.P2) with the remarks "funds insufficient". The petitioner-complainant served a legal notice (Ex.P3) dated 21.11.2008, posted on 22.11.2008 upon the respondent-accused calling upon him to make the payment. But the amount was not

returned resulting into the present proceedings.

The petitioner filed a complaint under Section 138 of the Act. After recording the preliminary evidence, the respondent-accused was summoned to face the trial for the offence under Section 138 of the Act. The trial Court vide judgment dated 4.5.2012 found that the respondent-accused delivered the cheque, raising a presumption that it was handed over in discharge of his financial liability and the accused had failed to rebut the statutory presumption as he had not led sufficient evidence in his defence. Accordingly, the trial Court held that the respondent-accused was liable for commission of offence under Section 138 of the Negotiable Instruments Act. The trial Court convicted him to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- vide judgment dated 4.5.2012.

Aggrieved by the aforesaid judgment dated 4.5.2012, the petitioner had filed an appeal for enhancement of sentence and for compensation, whereas, respondent-accused also filed an appeal against his sentence and conviction. Vide order dated 16.2.2013, learned Additional Sessions Judge, Ludhiana had allowed the appeal filed by the respondent-accused, whereas the appeal filed by the petitioner-complainant was dismissed. While acquitting the respondent-accused, the learned Appellate Court has held as under :-

“14. Before parting with my discussion, it is also pointed out that it is pertinent to mention here that CW1 Jagjit Singh did not deny in his cross examination that the receipt Ex.D3 dated 27.10.2006 was written by him, after receiving whole of the amount, as nothing remained pending against the accused. He did not

mince a word in conceding that it was written in the receipt that whole of the payment of the amount was made and nothing remained due against each other. It is settled proposition of law that when a party fails to deny the execution of a document, then presumption arises regarding the varacity and truthfulness of the said document. CW1 Jagjit Singh conceded that he is matriculate and knows Punjabi language. The receipt Ex.D3 was scribed in Gurmukhi Script. Onus was on the complainant to prove that the said receipt was not scribed by him. But surprisingly, he feigned ignorance regarding the execution of the same, which goes to falsify the version of the complainant.”

Learned counsel for the petitioner has argued that not only the evidence on record has been misread by learned Additional Sessions Judge, rather the Court has erroneously held that respondent-accused had returned whole of the outstanding amount i.e. Rs.1,35,000/- on 27.10.2006 vide receipt Ex.D3. The petitioner while appearing as CW1 has categorically stated in his statement that neither the alleged receipt was written by him nor he put any signature on the receipt. It was forged and fabricated document. He has argued that the learned Appellate Court has wrongly come to an erroneous presumption that the complainant was not having sufficient funds to lend the amount to the respondent-accused. He has further submitted that the respondent-accused while making a statement under Section 313 Cr.P.C. has categorically stated that he had refunded the amount i.e. Rs.1,35,000/- to the petitioner in the presence of Phool Chand Shatia-DW2. Therefore, this finding that the petitioner-complainant did not possess sufficient fund to lend the money to the respondent is contrary to the statement of the accused. He further

submitted that the amount in question was advanced in the month of January 2008 whereas the receipt Ex.D3 is ante-dated i.e. 27.10.2006 therefore does not carrying relevance to the present transaction.

On the other hand learned counsel for the respondent submits that there is statement on behalf of petitioner dated 27.10.2006, which read as under :-

“I Jagjit Singh s/o S: Harbans Singh is a resident of H.No.:B-II 557, Chhawani Mohalla, Ludhiana.

My whole transaction of money with Davinder Kumar (Shanty) has been finished today on dated 27/10/06. From today onwards I have no concern regarding transaction.

Sd/Jagjit Singh
27/10/06”

On the strength of above statement, learned counsel submits that whole of the amount has already been paid to the petitioner-complainant. He further submits that the petitioner-complainant in his cross-examination has stated that the cheques bearing Nos.726331, 726332 and 726337 were issued by the respondent-accused to the petitioner-complainant and when this amount was refunded, the cheques Nos.726332 and 726337 were returned to the respondent-accused.

I have heard learned counsel for the parties and finds that there is no illegality in the impugned judgment passed by the learned Additional Sessions Judge, Ludhiana. The petitioner-complainant while appearing as CW1, in his cross-examination, has clearly stated that the respondent-accused had borrowed an amount of Rs.1,35,000/- from him, regarding which he has filed the complaint. Interestingly, he had stated

that at the relevant time he was not having Rs.1,50,000/- and was having only Rs.1,35,000/-, rather has got even Rs.1,35,000/- from his Mamaji by mortgaging the gold. The petitioner-complainant could not tell the name of his Mamaji, from whom he has borrowed the money. It shows that the story formulated by the petitioner is palpably false. No receipt or bills were issued by the maternal uncle while lending or receiving the loan amount. Moreover, the petitioner has admitted the fact that the cheques issued by the accused were returned to him after receiving the payment from him. The petitioner has also failed to establish that the accused possess more than two houses as the alleged amount was taken for the purchase of the house. The sale deed, which is a part of the record, only pertains to only one house owned by the accused.

In view of the above, I find no merits in the present petition and the same is, therefore, dismissed.

August 31, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE