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

CRR No.3401 of 2015 (O&M)

Date of Decision: September 11, 2015.

Kuldeep Singh

.....Petitioner

Versus

Ajmer Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Manoj Kumar, Advocate
for the petitioner.

SABINA, J.

Petitioner had faced trial in a complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) qua dishonor of cheque in the sum of ₹4,50,000/-.

Trial Court vide orders dated 10.12.2014 ordered the conviction and sentence of the petitioner qua commission of offence punishable under Section 138 of the Act. The conviction and sentence of the petitioner, as ordered by the trial Court, was upheld by the Appellate Court vide order dated 10.08.2015. Hence, the present petition by the petitioner.

Case of the complainant, in brief, was that he had retired from service on 31.08.2012. He had received all of his retiral benefits. In October, 2012, petitioner approached the complainant for advancement of a friendly loan to the

tune of ₹4,50,000/-. In order to repay the said loan, petitioner issued cheque in question in favour of the complainant. However, when the cheque was presented for encashment in the Bank, it was dishonored by the Bank with the remarks "insufficient funds". Complainant served a legal notice dated 26.12.2012 on the petitioner but despite the said notice, petitioner had failed to pay the cheque amount in question to the complainant. Hence, the complaint in question was filed.

Learned counsel for the petitioner has submitted that the complainant had failed to prove his case. In fact, the body of the cheque in question had been filled by the complainant. Respondent had admitted in his cross-examination that he had not served any notice on the petitioner before the filing of the complaint. In support of his arguments, learned counsel has placed reliance on *John. K. Abraham versus Simon C. Abraham and another*, (2014-1) CLXXIII PLR 787, wherein, it was held as under:-

"When we examine the case of the respondent-complainant as projected before the learned Chief Judicial Magistrate and the material evidence placed before the trial Court, we find that the trial Court had noted certain vital defects in the case of the respondent-complainant. Such defects noted by the learned Chief Judicial Magistrate were as under:

(a) Though the respondent as PW-1

deposed that the accused received the money at his house also stated that he did not remember the date when the said sum of Rs.1,50,000/- was paid to him.

(b) As regards the source for advancing the sum of Rs.1,50,000/-, the respondent claimed that the same was from and out of the sale consideration of his share in the family property, apart from a sum of Rs.50,000/-, which he availed by way of loan from the co-operative society of the college where he was employed. Though the respondent stated before the Court below that he would be in a position to produce the documents in support of the said stand, it was noted that no documents were placed before the Court below.

(c) In the course of cross-examination, the respondent stated that the cheque was signed on the date when the payment was made, nevertheless he stated that he was not aware of the date when he paid the sum of Rs.1,50,000/-.

(d) According to the respondent, the cheque was in the handwriting of the accused himself and the very next moment he made a contradictory statement that the cheque was not in the handwriting of the appellant and that he (complainant) wrote the same.

(e) The respondent also stated that the amount in words was written by him.

(f) The trial Court has also noted that it was not the case of the respondent that the

writing in the cheque and filling up of the figures were with the consent of the accused appellant.”

Complainant, in order to prove his case, appeared in the witness box as CW1 and deposed as per the contents of his complaint. Complainant also examined CW2 Charan Singh and CW3 Jaspal Singh to corroborate his plea that the cheque presented by him with the Bank for encashment had been dishonored.

Petitioner when examined under Section 313 of Code of Criminal Procedure, 1973 took the plea that in fact, he had lost his cheque book and the cheque in question had been mis-used by the respondent. In support of his plea, petitioner examined DW1 Jaspal Singh and DW2 Daljeet Singh that he had lost the cheque in question.

Thus, in the present case, cheque in question was admittedly signed by the petitioner. A presumption arises that the cheque in question had been issued by the petitioner in discharge of legal liability. The plea taken by the petitioner that he had lost the signed cheque book, was rightly disbelieved by the Courts below as it cannot be believed that the petitioner was carrying a blank signed cheque book. Rather petitioner by lodging complaint that he had lost a signed cheque book on 08.12.2012, tried to create evidence in his favour so that, in case, the cheque in question issued by him on 10.12.2012, is dishonored, then

he can avoid the criminal proceedings. It has further been noticed by the Courts below that as per Exhibit DC, petitioner had only ₹1,086/- in his account. For such meagre amount, there was no occasion for the petitioner to carry a blank signed cheque book with him. Complainant had received his retiral dues after his retirement on 31.08.2012 and thus, apparently had the capacity to advance the loan in question to the petitioner. Complainant had duly proved on record legal notice Exhibit C4 and postal receipts Exhibit C5. In these circumstances, argument raised by the learned counsel for the petitioner that the petitioner had not been served any legal notice before filing the complaint is without any force.

In the facts and circumstances of the present case, the Courts below had rightly ordered the conviction and sentence of the petitioner under Section 138 of the Act. I have gone through the judgment relied upon by the petitioner but the same fails to advance the case of the petitioner as it is based on different facts.

Dismissed.

**(SABINA)
JUDGE**

September 11, 2015
mahavir