

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

**Criminal Revision No. 774 of 2015 (O&M)
Date of decision: - 02.09.2015**

M/s Bhairo Lal Om Parkash and others

...Petitioners

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. A.K. Gupta, Advocate,
for the petitioners.

SHEKHER DHAWAN

Present revision petition against judgment and decree dated 09.01.2012, passed by Judicial Magistrate, 1st Class, Panipat, whereby the revisionists were convicted under Section 138 of The Negotiable Instruments Act (hereinafter to be referred as 'The Act') and sentenced to undergo RI for a period of one year and six months and to pay fine of ₹2,000/- each and against order passed by Additional Sessions Judge, Panipat dated 19.02.2014, whereby the appeal against the said judgment was dismissed.

2. Learned counsel for the revisionists took the plea that as per averments of the complaint, revisionists used to purchase cotton fabric from complainant and in order to discharge their liability issued two cheques amounting to ₹2,50,000/- each, bearing No.214662 and 214663 dated

27.05.2008. On presentation, both the cheques were dishonored because of "Funds Insufficient", vide memo dated 19.08.2008. Thereafter, the payment was not made, despite repeated requests and legal notice.

3. Learned counsel for the revisionists mainly contended that cheques were actually misused and there was no legal liability towards revisionists. Courts below merely relied upon presumption under Sections 118 and 139 of 'The Act' and completely ignored the fact that presumption under Sections 118 and 139 of 'The Act' are rebuttal and the same have been duly rebutted in the case in hand. More so, the cheques were issued as security cheques and the same have been misused. Learned counsel for the revisionists placed reliance upon judgment from Hon'ble Kerala High Court in case C. Santhi Vs. Mary Sherly, 2011(4) R.C.R. (Criminal) 94, wherein, Hon'ble Kerala High Court took the view that mere production of cheques by complainant was not sufficient to prove execution by accused persons and complainant must allege and prove that the cheque was drawn or executed by the accused.

4. Learned counsel for the revisionists also took the plea that the parties were having business dealings and account books were not produced though the cheques were issued as security. So, conviction is liable to be set aside. On this point, reliance has been placed upon judgment from Hon'ble Supreme Court in case M.S Narayana Menon @ Mani Vs. State of Kerala and another, 2006 RCC (SC) 676, wherein, Hon'ble Supreme Court, took such a view. Learned counsel for revisionists also took the plea that complainant was power of attorney holder. In such like cases, complaint should be made and signed by the payee or the holder of cheque

Hon'ble Andhra Pradesh High Court in case S.P. Sampathy Vs. Manju Gupta, 2002 (3) R.C.R. (Criminal) 309, wherein, such a view was taken.

5. Having considered the submissions made by learned counsel for the revisionists, this Court is of the considered view that each case has its own peculiar facts. In the present case, the controversy is entirely different because revisionists have admitted their signatures on the cheques. That way, the execution of cheques was duly proved. Thereafter, the onus lawfully shifted upon revisionists to prove that the said cheques were actually issued for consideration but that onus has not been discharged in this case. Both the Courts below have taken the view accordingly. In this background, the plea taken by revisionists that the cheques were issued as security cheques or account books were not produced are not relevant.

6. Learned Additional Sessions Judge has rightly observed that once the accused admits his signatures on the cheques and there is no defence of fraud or cheating, lawfully presumption was to be raised that cheques were issued for discharge of any debt or liability. Revisionists had taken the plea that the cheques were only signed by them but the same were not filled by them but revisionists failed to lead any evidence on this point and as such this plea was negated by the Courts below.

7. More so, the Courts below have rightly taken the view that despite issuance of legal notice (Ex.C-5), the revisionists never took the plea that no payment was to be made against the cheques or the cheques were not issued by them. At this stage, the presumption cannot be raised in favour of the revisionists. Courts below rightly formed the opinion that revisionists had given the undertaking before the Court on 05.01.2013 that

the entire payment would be made to the complainant by 08.02.2013

positively but still they failed to make the payment. These facts established that acknowledgment of liability and execution of cheques for consideration was proved on the file and admitted by the present revisionists but still failed to honour the commitment having made before the Court. As such, the present revision petition is absolutely without any merit and same stands dismissed.

8. As regards to appeal against order of sentence dated 09.01.2012, the Courts below have already taken most reasonable view and awarded sentence to RI for one year and six months and to pay fine of ₹2,000/- for commission of offence under Section 138 of 'The Act'. There is absolutely no ground for release of revisionists on probation in such like case or further reduction of sentence period in this case.

9. Resultantly, the present revision petition is without any merit and same stands dismissed.

September 02, 2015

naresh.k

(SHEKHER DHAWAN)
Judge