

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

(i)

CRR No.1362 of 2012 (O&M)

Satbir Singh

...Petitioner

VERSUS

Om Singh

...Respondent

(ii)

CRR No.1363 of 2012 (O&M)

Satbir Singh

...Petitioner

VERSUS

Om Singh

...Respondent

(iii)

CRR No.1397 of 2012 (O&M)

Satbir Singh

...Petitioner

VERSUS

Om Singh

...Respondent

Date of Decision: July 25, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sandhu, Advocate
for the petitioner.

None for the respondent.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned three connected
revisions as the point for determination in all the revisions is the same.

The above-mentioned revision petitions have been filed by petitioner Satbir Singh challenging the judgment dated 17.01.2012 passed by learned Addl. Sessions Judge, Jind, vide which appeals filed by accused-respondent against the judgment of conviction dated 13.11.2009 and order of sentence dated 16.11.2009 passed by learned Chief Judicial Magistrate, Jind, were allowed and he was acquitted of the charge framed against him.

Notice of motion was issued but none appeared on behalf of respondent despite service.

I have heard learned counsel for the petitioner and have gone through the record.

The brief facts of the case are that complainant and accused were partners of M/s Chanda Marbles vide partnership deed dated 21.06.1997. The said partnership was dissolved on 16.09.2003 and sum of ₹2,47,692/- and ₹5,60,000/- were found outstanding towards the accused. In pursuance of the same, several post dated cheques were issued by the accused in favour of complainant, which on presentation for encashment, were returned back unpaid with the remarks 'Payment Stopped by Drawer'. Legal notices were issued. When the payment was not made, then the complaints were filed within time.

Learned CJM, Jind convicted accused-respondent under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay compensation in all the complaints. Appeals were filed by accused-respondent and learned Addl. Sessions Judge, Jind, accepted all the appeals and acquitted the accused-respondent.

The accused denied all the allegations in the statement under

Section 313 Cr.P.C. and examined DW-1 Sunil Chopra, Addl. Ahlmad, DW-2 Sandeep Kumar, Addl. Ahlmad, DW-3 Ashok Kumar, Senior Accountant, DW-4 Constable Satbir Singh and DW-5 Sumer Kumar Nagar, Ahlmad and thereafter, closed the evidence.

Learned Addl. Sessions Judge, Jind, after re-appreciating the evidence and after hearing arguments of both the parties, held that it is not in dispute that both the parties were running partnership firm and they have settled their accounts in the year 2003. The Court held that cheques bear the signatures of the accused, which is not in dispute. As per the defence version, the said cheques along with other cheques have been taken forcibly from the accused-respondent by one Satbir Singh and Kulbir Singh. The accused filed complaint in the police station and the same was marked for investigation, wherein, it is alleged that the present complainant (Satbir Singh) along with Kulbir Singh and other persons, came to the house and got signed the cheques including the cheques in question. Therefore, the Court held that these cheques are signed by the accused.

The presumption under Section 139 of the Negotiable Instruments Act is in favour of the holder of the cheque but this presumption is rebuttable and can be rebutted from the evidence of the complainant as well as by leading defence evidence. The perusal of the record shows that the complainant has not given any particulars regarding the loan amount i.e. on which date the amount was advanced to the accused. Whether the amount was paid on one date or different dates. The complainant in cross-examination stated that he did not remember the date, time and month regarding giving cash to the accused. He also stated that he

account but it was paid on different dates after receiving the amount from friends and neighbour. He further stated that the post dated cheques were issued by the accused. The complainant also admitted that he did not show the amount in his income tax return. He also admitted that he is not having any writing i.e. diary or bahi regarding giving money, which means that he is not maintaining any account. The complainant showed ignorance regarding the series of cheques issued in favour of his brother-in-laws (Jija and Sala). He also admitted that all the complaints filed by him pertain to the same series of the cheques. He denied the fact that through his brother-in-laws, had got filed frivolous complaints to blackmail the accused. Learned Addl. Sessions Judge, Jind held that from the cross-examination of the complainant, it is clear that his statement is not reliable and he failed to prove the liability towards the accused. The complainant did not succeed in proving that the accused had borrowed any sum for which the said cheques were issued. There is no document on the record to show the loan transaction. No receipt or any security document was obtained at the time of giving of such a huge amount.

The accused examined DW-4 Constable Satbir Singh, who after bringing the record, proved DDR entered at serial No.1045 in his register regarding information given by the accused qua theft of the cheques by the complainant. The accused also examined DW-3 Ashok Kumar Gehlaut, who proved application Mark DA vide which accused informed the Branch Manager that the cheques in question along with other cheques have been forcibly taken from him by the complainant Satbir Singh and Kulbir Singh and requested the bank to stop payment against said cheques. This

The lower Appellate Court also held that defence version is probable.

From the record, I find that the findings given by the learned Addl. Sessions Judge, Jind are correct and as per law. In no way, the findings can be held as perverse i.e. against the evidence or law. Nothing has been argued as to which material evidence has been misread or which material evidence has not been considered by the lower Appellate Court.

In view of the above discussion, I find that the impugned judgments dated 17.01.2012 passed by learned Addl. Sessions Judge, Jind, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in all the revision petitions, the same are dismissed.

July 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE