

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

Criminal Revision No.2036 of 2016 (O&M)

Date of Decision: 13.07.2016

Amarjit Singh

...Petitioner(s)

Versus

Kuljinder Singh

...Respondent(s)

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. K.S. Kahlon, Advocate
for the petitioner.

HARI PAL VERMA, J.

Petitioner has filed the present revision petition challenging the judgment dated 16.5.2016 passed by learned Additional Sessions Judge, Jalandhar, whereby his appeal against judgment of conviction and sentence dated 7.8.2014 passed by Sub Divisional Judicial Magistrate, Phillaur was dismissed. Vide judgment dated 7.8.2014, learned Magistrate has held the petitioner guilty for committing an offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") and has sentenced him to undergo rigorous imprisonment for a period of one year and to pay costs of Rs.2,000/-.

Briefly stated, respondent-Kuljinder Singh filed a complaint

against the petitioner under Section 138 of the Act and Section 420 IPC,

with the allegations that the petitioner has borrowed a sum of Rs.2,30,000/- from the respondent-complainant in the month of March, 2012 for his personal need. The petitioner had agreed to pay back the said amount within one month and in order to discharge his legal liability, he had issued a post-dated cheque, in favour of the respondent i.e. cheque No.722279 dated 17.4.2012 drawn on ICICI Bank Branch, Phagwara. The petitioner assured the respondent that in case the cheque is presented in the bank, the same shall be encashed. Respondent presented the said cheque in bank for encashment, but the same was returned back with the remarks "Account Closed" vide memo. dated 19.4.2012. As required under Section 138 of the Act, the respondent issued a Legal Notice dated 14.5.2012 to the petitioner to make the payment of the cheque amount. However, the petitioner did not make the payment of the cheque amount in question, giving a cause of action to the respondent-complainant to file the present complaint. Petitioner was summoned under Section 138 of the Act and notice of accusations for commission of offence under Section 138 was also served upon him. The petitioner did not plead guilty and rather, claimed trial.

The respondent himself stepped into the witness box as CW-1 and reiterated the averments made in the complaint in his affidavit Ex.CA and proved the statement of account as Ex.C1, original cheque dated 17.4.2012 as Ex.C2, memo. dated 19.4.2012 as Ex.C3, legal notice dated 14.5.2012 as Ex.C4 and postal receipt as Ex.C5 and closed his evidence.

The statement of the petitioner under Section 313 CrPC was recorded and all the incriminating evidence appearing against him was put to him, to which, he pleaded false implication and claimed his innocence.

Learned trial Court had framed the following issues for

- “1. Whether accused has issued a cheque for a sum of Rs.2,30,000/- dated 17.04.2012 drawn on ICICI Bank Branch Phagwara in favour of the complainant in discharge of his legal liability or not?”*
- 2. Whether said cheque on presentation returned back dishonoured with the remarks “Account closed” and despite the issuance of legal notice accused failed to make the payment of the cheque amount within statutory period or not?”*

The petitioner referred to the cross-examination of CW-1 Kuljinder Singh (complainant) who had stated that at the time of handing over the cheque, Santokh Singh and Amarjit Singh were present, but the complainant had not examined these witnesses so as to corroborate the allegations made in the complaint. It was pointed out that the fact as to when the loan in question was taken by the petitioner has not been mentioned in the complaint.

Having heard learned counsel for the parties and considering the contentions raised on their behalf, learned trial Court vide judgment dated 7.8.2012 held the petitioner guilty for commission of offence under Section 138 of the Act and sentenced him, as mentioned in the opening para of the judgment.

Aggrieved from the aforesaid judgment of conviction and sentence passed by the trial Court, the petitioner filed an appeal before learned Additional Sessions Judge, Jalandhar. However, the said appeal was dismissed with the following observations:-

“13. The cheque Ex.C2 dated 17.4.2012 is for an amount of Rs.2,30,000/-. When the same was presented in the Bank, it received back with memo Ex.C3 with remarks “Account Closed”. The complainant has also proved on record, the notice dated 14.5.2012 Ex.C4 served by him through his

counsel Sh. Rajesh Kumar, Advocate, Phillaur to appellant/accused vide Postal receipt Ex.C5, but despite that the appellant/accused failed to make the payment of cheque amount of Rs.2,30,000/- to the respondent/complainant. Moreover, the appellant/accused himself suffered the statement in this court on 18.4.2016 that a compromise has been effected between him and respondent/complainant for an amount of Rs.1,30,000/- on today itself i.e. 16.5.2016 and make the payment of remaining amount of Rs.1,00,000/- after one and half month from 16.5.2016, but today he has not brought even a single penny as per the compromise dated 18.4.2016.

14. In this way he admitted regarding issuance of the cheque Ex.C2, which ultimately dishonoured with remarks "Account Closed". Hence, the trial court rightly hold that appellant/accused Amarjit Singh committed the offence punishable under Section 138 of the "Act"

Learned counsel for the petitioner has argued that though Section 139 of the Act merely raises a presumption in favour of the holder of the cheque that the same has been issued for discharge of debt or liability, however, the said presumption does not relate to existence of legally enforceable debt or liability and therefore, before drawing a presumption under Section 138 of the Act, it is the duty of the Court to see whether or not the complainant has discharged his initial burden as to existence of enforceable debt. He further argued that the complainant-respondent was not holding money lending licence and therefore, he is legally deprived of recovering the aforesaid loan amount in the absence of his disclosure in the income tax returns. Thus, the petitioner was not liable to be proceeded against under Section 138 of the Act. Learned counsel further argued that the petitioner is an old patient of multiple substance abuse disorder with psychotic disorder with recent memory and judgment. Therefore, the

undertaking/compromise entered by him and non-compliance thereof does not constitute an offence as per Section 84 IPC.

I have heard learned counsel for the petitioner.

When the cheque was bounced, on account of closure of account by the petitioner, the respondent had served a legal notice upon him before filing the present complaint, but the petitioner did not reply to the said notice. In order to invoke Section 138 of the act, the three ingredients which need to be fulfilled are (i) that there is a legal enforceable debt; (ii) that the cheque was drawn from the account of the bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt and (iii) that the cheque so issued had been returned due to insufficiency of funds. The proviso appended to the said Section provides for compliance of legal requirements before a complaint can be acted upon by the Court of law. Section 138 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. Rather, it merely raises a presumption in favour of the holder of the cheque that the same has been issued for discharge of any debt or liability. Thus, ingredients of Section 138 of the Act have duly been met, as the accused was unable to rebut the statutory presumption under Section 139 of the Act. Even otherwise, the petitioner has himself suffered a statement before the lower Appellate Court that a compromise has been effected between the petitioner, according to which, the petitioner agreed to make payment of Rs.1,30,000/- on that date itself i.e. 16.5.2015 and to make the remaining payment within on month thereafter. But the petitioner did not honour the said statement. The plea of the petitioner that he is a patient of multiple substance abuse disorder with psychotic disorder with recent memory and

judgment, is of no help to him, when the same was never agitated before the Courts below. This plea is altogether a new plea and the same is not admissible at this stage. Once the petitioner has made a statement that he will make the payment within a specified period and has failed to honour the same, he is estopped from raising altogether a new plea at this stage.

In these circumstances, this Court is not inclined to interfere in the judgments passed by the Courts below.

Accordingly, the present revision petition is dismissed.

July 13, 2016
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(HARI PAL VERMA)
JUDGE