IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRR No.4409 of 2015 (O&M)

M/s Dev Milk Specialists and others

...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre

...Respondent

(2) CRR No.4410 of 2015 (O&M)

M/s Dev Milk Specialists and others

...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre

...Respondent

(3) CRR No.4411 of 2015 (O&M)

M/s Dev Milk Specialists and others

...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre

...Respondent

(4) CRR No.4412 of 2015 (O&M)

M/s Dev Milk Specialists and others

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M/s Bakshish Singh Sandhu Chilling Centre

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(5) CRR No.4413 of 2015 (O&M)

M/s Dev Milk Specialists and others

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(6) **CRR No.4414 of 2015 (O&M)**

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(7) **CRR No.4415 of 2015 (O&M)**

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(8) **CRR No.4416 of 2015 (O&M)**

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(9) **CRR No.4417 of 2015 (O&M)**

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(10) **CRR No.4418 of 2015 (O&M)**

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(11) CRR No.4419 of 2015 (O&M)

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(12) CRR No.4420 of 2015 (O&M)

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(13) CRR No.4421 of 2015 (O&M)

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(14) CRR No.4422 of 2015 (O&M)

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(15) CRR No.4423 of 2015 (O&M)

M/s Dev Milk Specialists and others

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M/s Bakshish Singh Sandhu Chilling Centre

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(16) **CRR No.4424 of 2015 (O&M)**

M/s Dev Milk Specialists and others
...Petitioners

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M/s Bakshish Singh Sandhu Chilling Centre
...Respondent

(17) **CRR No.4425 of 2015 (O&M)**

M/s Dev Milk Specialists and others
...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre
...Respondent

(18) **CRR No.4426 of 2015 (O&M)**

M/s Dev Milk Specialists and others
...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre
...Respondent

(19) **CRR No.4427 of 2015 (O&M)**

M/s Dev Milk Specialists and others
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M/s Bakshish Singh Sandhu Chilling Centre
...Respondent

(20) **CRR No.4428 of 2015 (O&M)**

M/s Dev Milk Specialists and others
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VERSUS

M/s Bakshish Singh Sandhu Chilling Centre
...Respondent

(21) **CRR No.4429 of 2015 (O&M)**

M/s Dev Milk Specialists and others

...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre

...Respondent

(22) **CRR No.4430 of 2015 (O&M)**

M/s Dev Milk Specialists and others

...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre

...Respondent

(23) **CRR No.4431 of 2015 (O&M)**

M/s Dev Milk Specialists and others

...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre

...Respondent

(24) **CRR No.4432 of 2015 (O&M)**

M/s Dev Milk Specialists and others

...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre

...Respondent

(25) **CRR No.4433 of 2015 (O&M)**

M/s Dev Milk Specialists and others

...Petitioners

VERSUS

M/s Bakshish Singh Sandhu Chilling Centre

...Respondent

Date of Decision: August 12, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Boparai, Advocate
for the petitioners.

Mr.F.S.Virk, Advocate
for the respondent.

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INDERJIT SINGH, J.

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

The above-mentioned revision petitions have been filed by petitioners M/s Dev Milk Specialists, Arpinder Singh Pannu and Ranjit Singh Pannu challenging the judgments dated 20.02.2015 passed by learned Judicial Magistrate Ist Class, Amritsar, vide which the petitioners were convicted and sentenced to undergo rigorous imprisonment for a period of two years each under Section 138 of the Negotiable Instruments Act and also challenging the judgments dated 05.10.2015 passed by learned Addl. Sessions Judge, Amritsar, vide which appeals filed by petitioners were dismissed.

Notice of motion was issued and learned counsel for the respondent appeared and contested the petitions.

The facts of the case are taken from CRR No.4409 of 2015.

The brief facts of the case as noted down in the judgment dated 20.02.2015 passed by learned JMIC, Amritsar, are as under:-

"2. Succinctly, the case of complainant is that there is business dealings between accused and complainant regarding sale and purchase of milk and approximately an amount of Rs.1,25,00,000/- stands due towards accused. Accused, after going through the accounts and in order to discharge their

> *partial legal debt and liability, handed over 25 post dated cheques to complainant at Amritsar and fully assured that all the cheques would certainly be encashed upon their presentation. Complainant firm is payee/holder in due course of cheques and out of those cheques, complainant presented one cheque bearing No.004009 dated 24.8.2010 for Rs.5,00,000/- drawn on State Bank of Patiala, Branch SCO 34-35, Industrial Area, Phase 7, Mohali. At the time of issuing said cheque, both the accused persons assured the complainant that the said cheque, upon its presentation, shall certainly be encashed. On the assurance of accused, complainant presented the said cheque for its clearance with its banker namely 3 Punjab National Bank, Branch Ranjit Avenue, Amritsar, but the same was dishonoured with the remarks "Exceed Arrangement" vide memo dated 25.8.2010. Thereafter, complainant served the accused with legal notice dated 14.09.2010 through Registered post but despite the service of legal notice, accused have failed to make the payment to complainant till date. Hence, the present complaint is filed under section 138 Negotiable Instruments Act,1881 (for brevity 'N.I.Act')."*

Learned JMIC, Amritsar, after appreciating the evidence, convicted and sentenced the petitioners as stated above. Appeals were filed by the petitioners and the same were dismissed by learned Addl. Sessions Judge, Amritsar vide judgment dated 05.10.2015.

Aggrieved from the above-said judgments, all the above-mentioned revision petitions have been filed.

At the time of arguments, learned counsel for the petitioners mainly argued that no particulars regarding supply of milk have been given. No cogent evidence has been produced showing delivery of the milk by examining the truck drivers, record regarding tankers which carried the milk or by producing the bills, receipts etc. He argued that it is to be proved by the complainant that there was a legally recoverable debt against the accused.

On the other hand, learned counsel for the respondent argued that the issuance of the post dates cheques, which are amounting of ₹5 lacs each, are not disputed by the accused. These cheques have been given to the complainant by the accused, therefore, presumption under Section 139 of the Negotiable Instruments Act is in favour of the complainant and against the accused and the accused-revision petitioners are to rebut that presumption by raising probable defence. He further argued that statements of account as well as computer generated original bills have already been proved on the record by the witnesses of the complainant and in no way, the impugned judgments passed by the Court bellows can be held as perverse or illegal.

After hearing learned counsel for the parties and after going through the record, I find that there is no dispute regarding the signatures of the accused on the cheques. There is no dispute that these cheques were not from the account of the accused. There is also no dispute that the cheques in question were not given by the accused to the complainant. There is no dispute regarding the fact that legal notices were not served.

The perusal of the record shows that no reply was given by the accused to the legal notices to take defence that the cheques in questions were given as security cheques or the complainant is misusing the cheques. No reason or ground has been given as to why replies were not given to the legal notices which were issued separately from time to time by mentioning that the complainant is misusing the cheques and those cheques were given as security cheques. Secondly, the accused have not made any attempt to inform the bank to stop the payment as the complainant is misusing or informing that complainant can misuse the cheques. No action of any type has been taken against the complainant for misusing the cheques by filing the complaint or getting a DDR or FIR registered against the complainant. There is no cogent evidence on the record to show that these cheques have been given as security to the complainant. Even if it is taken that cheques in question have been given as security, then, there is nothing to show as to what was the necessity to give the post dated cheques.

The presumption under Section 139 of the Negotiable Instruments Act arose against the accused and it is for the accused to show that defence version taken by him is probable. Learned Magistrate has discussed the statement of DW-2 Smt.Jaimeet Kaur, Civil Ahlmad, who produced some documents relating to civil suit, which the Magistrate says, have no relevancy with this case. Even at the time of arguments before this Court, nothing has been argued qua those documents pertaining to civil proceedings. The other witness examined by the accused is DW-1 Amanpreet Singh, Record Keeper, who produced the record regarding the Sales Tax Department qua the accused. The Court has rightly held that those documents were given by the accused to the Sales Department and these will not prove that no milk was supplied to the accused. No attempt was made to call the record of the complainant from the Sales Tax Department for showing that no milk was supplied to the accused by the complainant. Therefore, the defence raised by the accused is not supported and corroborated by any cogent evidence.

On the other hand, the complainant examined himself as CW-1. He has produced the cogent evidence by examining CW-2 Jaspal Sharma, Accountant of the complainant firm, who has proved the balance sheet as well as original bills which are computer generated i.e. Ex.CW2/1 to Ex.CW2/40. The complainant also examined CW-3 Sunil Arora, CA of the complainant firm, who has deposed that he is working since the year 2006-07 and he is working as statutory Auditor of the complainant firm and he deposed that he had verified the sales bills mentioned in Ex.C11. In no way, it can be held the complainant has not proved the liability. As per the statement of the accountant, more than ₹1.25 crores is payable by the accused to the complainant.

This is a revision petition. In the revision petition, this Court is not to re-appreciate the evidence like Court of an appeal. Learned counsel for the revision petitioners has not pointed out as to how the findings given by the Courts below are perverse or against the evidence. Nothing has been pointed out as to which material has been misread and which material evidence has not been considered by the Courts below. Mere non-production of the Income Tax Return or the evidence that milk was supplied in the trucks or the truck drivers, in no way, can be held as fatal to the complainant's case. As the presumption has arisen, it was first for the accused to rebut the same. The accused have failed to rebut the presumption. Rather, the complainant has led even cogent evidence to prove his case beyond any doubt by examining his Accountant and CA in the witness box along with him.

In view of the above discussion, I find that learned Courts below have given the findings by correctly appreciating the evidence in right perspective. In no way, the impugned judgments can be held as perverse or illegal. Therefore, I find that the impugned judgments passed by the Courts below are correct, as per law and do not require any interference from this Court.

Resultantly, finding no merit in all the above-mentioned revision petitions, the same are dismissed.

However, it is ordered that the sentences imposed upon the petitioners in all the above-mentioned cases shall run concurrently as all the cheques have been issued in one and same transaction and there is no reason or ground as to why these sentences should not run concurrently.

August 12, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **No**