

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

CRR No. 952 of 2016 (O&M)

Date of Decision: 19.10.2016.

Ashok Kumar

... Petitioner

Versus

Jaswant Singh

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate,
for the petitioner.

JITENDRA CHAUHAN.J.

This revision is directed against the judgment dated 29.10.2010, passed by Judicial Magistrate First Class, Amritsar vide which the respondent was acquitted of the offence under Section 138 of Negotiable Instruments Act (for short “the Act”) and; the judgment dated 4.10.2012, passed by Sessions Judge, Amritsar vide which the appeal filed by the complainant was dismissed.

Briefly stated the complainant-petitioner filed a complaint before the Court of Judicial Magistrate First Class, Amritsar under Section 138 of the Act. It was alleged by the complainant that he had good relations with the accused and on account of that, the

complainant lent an amount of Rs. 1,25,000/- to the accused. In discharge of his liability, the accused issued cheque No. 661736 dated 6.07.2007 drawn on Punjab National Bank, Putlighar Branch, Amritsar in favour of the complainant. The same was dishonoured. Thereafter, the complainant got issued legal notice to the accused. Since the amount was not paid by the accused, the complainant had to file the complaint.

On appearance of the accused, notice of accusation under Section 138 of the Act was issued to the accused to which he did not plead guilty and claimed trial.

In order to prove his case, the complainant himself appeared as CW-I and examined Dilbagh Singh, Clerk, as CW-2 and thereafter closed his evidence.

The statement of accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which he denied and pleaded false implication. It was stated by the accused that the complainant is real son-in-law of Smt. Sawarn Sharma, widow of Avtar Krishan Sharma, who was previously resident of 4823/25, Guru Arjan Dev Nagar, G.T.Road, Amritsar. Some property was sold by Babu Ram Sharma through Smt. Swaran Sharma. The complainant on the whole acted as a mediator and in this regard he received payment of Rs. 7,00,000/- from the accused in cash and Rs. 1,50,000/- by cheque

against receipt and Rs. 1,50,000/- were received at the time of execution of sale deed of aforesaid property and Rs.1,90,000/- were received at the time of execution of sale deed on 8.11.2006. He further submitted that the complainant received Rs. 20,000/- in cash from the accused on 25.01.2006 against receipt. He further submitted that the brother-in-law of the complainant, Deepak Kumar and son of Sawaran Sharma, received Rs. 80,000/- by cheque. As such, the complainant had received Rs.1,60,000/- in excess, which was over and above the payment from the sale of aforesaid property. But, the complainant along with Sawaran Sharma, did not deliver the possession of exact area of the plot mentioned in the sale deed of the property. The accused has further taken the defence that the complainant received excess payment of Rs.1,60,000/- in good faith and later on filed the present false complaint against him and as such the accused had to stop the payment of cheque and had moved an application for this purpose to Punjab National Bank, Putlighar Branch, Amritsar. He further submitted that he requested the complainant a number of times to deliver back the cheque but the complainant did not do so and concocted a false story.

The accused in defence evidence, examined Balbir Singh, Computer Operator, PNB Putlighar as DW-1 and Kartar Singh as DW-2 (wrongly numbered as DW-1) but when none had turned up on behalf of complainant to cross-examine Kartar Singh, his cross-examination

was treated as Nil. The accused then examined Jatinder Pal Singh as DW-3, Balwant Singh, Record Keeper, Canara Bank as DW-4 and Vikram Duggal, Senior Manager, Canara Bank, as DW-5.

After appraisal of the evidence, the trial Magistrate acquitted the accused of the offence under Section 138 of the Act and dismissed the complaint.

Feeling aggrieved against the judgment of acquittal dated 29.10.2010 passed by Judicial Magistrate First Class, Amritsar, the complainant preferred an appeal before the Sessions Judge, Amritsar. The said appeal was dismissed vide judgment dated 4.10.2012.

By filing the instant revision petition, both the aforesaid judgments have been assailed.

It is contended by the learned counsel for the petitioner that the Courts below fell in error in not appreciating the facts of the case as in the instant case, the complainant was required to prove that the accused had issued cheque in question in discharge of his legal liability, the same stood dishonoured and the accused did not make the payment despite a legal notice having been issued to him. The factum of the sale deed executed by the mother-in-law of the complainant has hardly bearing on the facts of the case. There is a contradiction between the statement of accused and that of DW-3 regarding advancing the loan of Rs.1,50,000/-.

I have heard the learned counsel for the petitioner and have

gone through the case file.

Along with the instant revision petition, CRM No. 7951 of 2016 has been filed for condonation of delay of 1093 days in filing the revision petition. The reason for the delay has been assigned that the paper book got misplaced in the office by the Clerk. The application for condonation of delay does not disclose when the file was lost, when it was traced and what efforts were made by the petitioner or his counsel during this interregnum. A negligent litigant cannot seek discretionary relief from a Court. The delay has not been satisfactorily explained. This Court finds that the ground for condonation of delay is neither cogent nor inspires any confidence. Consequently, the application is dismissed.

Even otherwise, the petitioner has no case on merits. The learned trial Court after appreciating the evidence has recorded a finding that mother-in-law of the complainant had sold property to the accused and in discharge of that liability, the accused made payment of Rs.7,00,000/- in cash and Rs. 1,50,000/- by cheque and again Rs. 1,50,000/- at the time of execution of sale deed. Further, a sum of Rs. 1,90,000/- was paid to the mother-in-law of the complainant at the time of execution of sale deed dated 8.11.1986. The complainant acted as a mediator in the aforesaid execution of the sale deed. Further, complainant received Rs.20,000/- in cash from the accused on 25.1.2006 against receipt. Apart from that, brother-in-law of the

complainant received Rs. 80,000/- by cheque and as such the complainant received Rs. 1,60,000/- in excess, which was over and above the payment in respect of aforesaid sale deed. Further, there is a finding of fact recorded by the trial Magistrate that the very basis of the complaint stands shaken. As per the allegations made in the complaint, it was a friendly loan whereas, from the facts proved on record, it emerges that the cheque was issued by the accused in respect of sale deed executed by mother-in-law of the complainant in favour of the accused. That being so, the complainant cannot be said to have approached the Court with clean hands. There is no explanation with the complainant for filing the complaint on flimsy grounds. Further, the sale deed Ex. DX-I reveals that the area of plot measured 243. square yards whereas, the actual area was 225 square yards. The accused stopped the payment of cheque due to this reason and the same stands corroborated from the testimony of DW-1, Kartar Singh, Halqa Patwari, who had proved on record the Jamabandi of the plot bearing khasra No. 3864/291 Ex.DW I/I. The factum of sale deed has been proved by DW-2 Jatinder Pal Singh. There is a finding on record that the complainant had received an amount of Rs.20,000/- from the accused vide receipt Ex. DX 3. If the complainant himself has received Rs.20,000/- from the accused then the story of lending a loan of Rs.1,50,000/- by the complainant to the accused does not inspire confidence. This being so, this Court finds no reason to interfere in the

well reasoned judgments passed by the Courts below. Consequently, the present petition is dismissed on the ground of delay as well as on merits.

19.10.2016.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No