

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

CRM No.M-12496 of 2016 (O&M)

Date of Decision: July 12, 2017

Vikas Yadav

...Petitioner

VERSUS

Brij Mohan Aggarwal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.I. Hasija, Advocate for
Mr.Ravinder Hooda, Advocate
for the petitioner.

Mr.Sanjay Mittal, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing the judgment dated 22.03.2016 passed by learned Addl. Sessions Judge, Gurgaon, vide which revision petition filed by the petitioner against the order dated 18.12.2015 passed by learned Sub Divisional Judicial Magistrate, Pataudi, summoning the petitioner, has been dismissed.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

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

From the record, I find that Brij Mohan Aggarwal filed

Vikas Yadav accused. Learned SDJM, Pataudi, on the basis of the preliminary evidence, held that it is prima facie established that accused in discharge of his existing liability, issued cheque bearing No.009961 dated 14.09.2015 for ₹52 lakhs, which on presentation for encashment, was received back with remarks 'Stop Payment' vide memo dated 23.09.2015 Ex.C2. Thereafter, complainant issued legal notice on 09.10.2015 Ex.C3 through postal receipt Ex.C4 but the accused failed to make payment and then the complaint was filed. The Court held that there are sufficient grounds to proceed against the accused and they were summoned vide order dated 18.12.2015. Aggrieved from this order, a revision was filed by the petitioner and learned Addl. Sessions Judge, Gurgaon, dismissed the same vide detailed impugned judgment dated 22.03.2016.

Learned counsel for the petitioner argued that the cheque in question was returned back with the remarks 'Stop Payment' and not due to the reason of insufficient funds. The case, where the cheque is dishonoured with the remarks of 'Stop Payment' also falls under Section 138 of the Negotiable Instruments Act. The cheque was not got encashed by the holder of the cheque.

Furthermore, learned counsel for the petitioner argued qua his defence that cheque book containing 25 leaves, was given to the complainant in the year 2012. This is finding of fact, which is to be given by the trial Court when the parties will lead evidence and it is the defence of the present petitioner, which cannot be decided in these proceedings without any evidence. Otherwise also, if the signature of the petitioner is admitted on the cheque, then the presumption arose against him and he is to rebut that

judgment passed by the Courts below are abuse of process of law and amount to miscarriage of justice. No ground is made out for quashing the impugned judgment and order passed by the Courts below.

Therefore, finding no merit in the present petition, the same is dismissed.

However, nothing stated above will constitute my opinion on the merits of the case.

July 12, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No