

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

CRR-250-2013(O&M)

Date of decision:-31.10.2017

Ravi Shanker

...Petitioner

Versus

Parveen Gupta and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajinder Goyal, Advocate
for the petitioner.

Mr.N.S. Shekhawat, Advocate
for the respondents.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 9.10.2012 passed by learned Additional Sessions Judge, Jind vide which he had dismissed an appeal filed by the complainant Ravi Shanker against judgment dated 3.9.2010 passed by Sub Divisional Judicial Magistrate, Narwana dismissing the complaint.

The complainant, who is the petitioner before this Court prays that such judgment passed by the lower Appellate Court of learned Additional Sessions Judge, Jind be set aside by way of acceptance of the appeal and accused be convicted and sentenced in accordance with law.

Briefly stated, the facts of the case are that Ravi Shanker, Proprietor of M/s Ravi Shanker Trading Company, Old Anaj Mandi, Narwana, District Jind had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as *the Act*) against Parveen Gupta, Proprietor of M/s Parveen Traders, Commission Agents, Anaj Mandi, Narwana, District Jind on the allegations that accused had purchased *BAJRA* on credit from complainant and in discharge of legally enforceable liability towards price of the *BAJRA* so purchased had issued cheque No.046716 dated 21.7.2008 for Rs.1.00 lac drawn on Punjab National Bank, Narwana, however, on presentation, the cheque was returned uncashed with memo of the bank having endorsement "Account Closed" which was of dated 22.7.2008; that the complainant was informed accordingly; that he issued demand notice dated 31.7.2008 to the accused calling upon him to make payments within fifteen days from the date of receipt of notice but to no effect. As such, he filed a complaint in the Court.

After recording preliminary evidence, accused was summoned. He put in appearance and admitted to bail, notice of accusation under Section 138 of the Act was served upon him, to which he pleaded not guilty and claimed trial.

During the course of evidence, complainant himself appeared as CW1 and further examined Naveen Kumar, Clerk, OBC, Narwana as CW2 and Ramphal, Mandi Supervisor, Market Committee, Narwana as CW3, besides tendering documents.

With that evidence of the complainant stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that complainant had in fact received cheque in question from him on the pretext that complainant suddenly required sum of Rs.1.00 lac for personal use and as such he had issued cheque in question issued in the personal name of complainant in the month of April, 2007 but complainant had subsequently converted said cheque by inserting the words "Trading Co." in the body column of the cheque and moreover he had closed his bank account in the month of May, 2007. Accused further pleaded that he had never purchased any *BAJRA* vide Ex.P7 from the complainant and as such complainant had misused the cheque in question by making alteration therein including by filling a date and that although he had received demand notice dated 31.7.2008 but he had sent reply in his defence.

In defence evidence, accused examined Dr.Inderjit Singh, Handwriting & Fingerprints Expert, Patiala as DW1, who proved his report Ex.D1 along with documents Ex.D2 to Ex.D6, Krishan Dahiya, Clerk, AETO Office, Narwana as DW2 and Kapoor Chand, Clerk of Shri R.C. Goyal, Advocate, Narwana as DW3.

With that the defence evidence stood closed.

After hearing arguments, learned Sub Divisional Judicial Magistrate, Narwana has acquitted the accused for the following reasons:

- (i) By acceptance of the stand taken by the accused that he had given cheque Ex.P1 to complainant in his

personal capacity and at that time word “Ravi Shanker” was only mentioned in the cheque at remaining words in the body column of the cheque were subsequently inserted in view of the report given by Dr.Inderjit Singh, Handwriting and Fingerprints Expert;

(ii)that there being material alterations in the body column and in the date in cheque Ex.P1, bill Ex.P7 and books of account of complainant Ex.P8 and Ex.P9 not containing signatures of accused, form-M Ex.CW3/A issued by Market Committee, Narwana, not accepted as a strong piece of evidence to prove the transaction in question for the purpose of the Act;

(iii)that there being cuttings on the column of date Ex.P4, reply to demand notice sent by the accused to counsel for complainant but no mention thereof being there in the complaint; and

(iv)that there being no existing legally enforceable liability at the time of issuance of the cheque.

The appeal preferred against the judgment of acquittal passed by the Sub Divisional Judicial Magistrate, Narwana was also dismissed by learned Additional Sessions Judge, Jind, which left petitioner – complainant aggrieved and he has filed the present revision petition.

Notice of the revision petition was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that the conclusion arrived at by the Courts below are wrong inasmuch as signatures on cheque and issuance of cheque to Ravi Shanker is not disputed by the accused, Form-M is proved, the account books and record from Market Committee corroborated the stand of the complainant; that presumption under Sections 118 and 138 of the Act being there in favour of the complainant. He further argued that the cheque could be filled up by any body if signed by account holder of the cheque. In support of his contentions, learned counsel for the petitioner has referred to **D.Atchyutha Reddy Versus State of A.P., through Public Prosecutor, High Court of A.P. And another, 2010(2) R.C.R.(Criminal)860** by High Court of Andhra Pradesh and **Gurdev Singh Versus M/sPunjab Agricultural Traders, 2011(4) R.C.R.(Criminal) 562** by a Co-ordinate Bench of this Court.

On the other hand learned counsel for the accused – respondent No.1 has argued that there has been tampering in the cheque, as proved by report of Handwriting Expert, therefore, complaint on its very basis is not maintainable. The presumption in favour of whole of the cheque was successfully rebutted by the accused. He further contended that revisional jurisdiction of this Court is quite limited and evidence cannot be reappraised while hearing revision petition. He has referred to authority **Om Parkash Versus Subhash Chand, 2013(1) R.C.R.(Civil) 609**. As per the facts of the case of the authority, there was opinion of

Handwriting Expert that figure Rs.2,500/- has been altered subsequently to Rs.2,52,500/- by adding digit 25 in from of Rs.2,500/-. The cheque had been dishonoured and a complaint under Section 138 of the Act had been filed. It was observed that the fact of alterations itself was sufficient to acquit the accused. He further referred to *Aneeta Hada Versus M/s. Godfather Travels and Tours Pvt. Ltd., 2012(2) R.C.R.(Criminal) 854* by the Hon'ble Apex Court, wherein it was observed that when a cheque issued by the company was dishonoured, the prosecution of Director without arraying company as accused cannot be done.

After hearing the rival contentions of the parties, I find that the plea so raised by counsel for the complainant have been dealt with in detail by the Courts below. The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse or the same having been passed in violation of settled principles of criminal jurisprudence. This is not the position as regards the present case. No ground is made out to exercise the revisional jurisdiction.

Thus finding no merits in the petition, the same stands dismissed.

31.10.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No