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

**CRR-128-2014
Date of decision : 01.11.2017**

M/s S.F. Finance Company (P) Ltd.
...... Petitioner

Versus

Surinder Kuamr
...... Respondent

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

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Present : Mr. Rajan Bhargava, Advocate
for the petitioner.

Mr. G.S. Saini, Advocate
for the respondent.

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H.S. MADAAN, J.

M/s S.F. Finance Company (P) Limited, Walia Complex, College Road, Pathankot through Managing Director Ravinder Singh Basra had brought a complaint under Section 138 of the Negotiable Instruments Act read with Section 420 IPC IPC against accused Surinder Kumar C/o Jeevan Electrical Works, Pathankot on the allegations that the accused in order to discharge a legal enforceable debt and liabilities the complainant had issued cheque bearing No.029425 dated 08.07.2002 in the sum of ₹5,25,000/- drawn on the Gurdaspur Central Co-operative Bank Ltd. Pathankot giving assurance that on presentation the cheque would be encashed, however, things went otherwise when it was so done and the cheque was dishonoured due to insufficient funds in account of the accused. Banker of the accused informed banker of the complainant vide memo having endorsement 'insufficient funds', intimation was received by the complainant on 09.07.2002, thereafter he served statutory legal notice dated 11.07.2002 upon the accused calling upon him to make payment of cheque amount within 15 days on receipt of notice, but accused did not do so despite receiving notice, thereafter the complaint was filed.

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

During course of evidence of complainant, he examined CW-1 Bishan Singh, Clerk, The Gurdaspur Central Co-operative Bank Ltd. Branch Pathankot who tendered in evidence his affidavit Ex.CW1/A; CW-2 Navneet Kumar Clerk, Oriental Bank of Commerce, Dhangu Road, Pathankot, who tendered in evidence his affidavit Ex.CW2/A. Complainant Ravinder Singh Basra got his own statement recorded as CW-3 by tendering his affidavit Ex.CW3/A. The complainant proved in evidence documents i.e. Cheque Ex.C1, Memo Ex.C2, Postal receipt Ex.C3, Cheque return register Ex.C4, statement of account Ex.C5, cheque produce register Ex.C6, copy of Board Resolution Ex.C7, notice Ex.C8, postal receipt Ex.C9 and Ex.C10.

Statement of accused under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing against the accused were put to him, but he denied the same contending that he is innocent and has been falsely involved in this case. He did not lead any evidence in defence.

After hearing arguments, the trial Magistrate convicted the accused for offence under Section 138 of the NI Act and sentence him to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/-, in default of payment of fine to undergo further rigorous imprisonment for a period of two months vide judgment and order of sentence dated 29.03.2010.

Feeling aggrieved the accused had preferred an appeal to the Court of Sessions, which was disposed of by Additional Sessions Judge, Pathankot vide judgment dated 17.09.2013 inasmuch as the appeal was accepted, the impugned judgment of conviction and sentence passed by the Judicial Magistrate Ist Class, Pathankot was set aside and he was acquitted of the charge framed against him.

The reasoning given by the Additional Sessions Judge, Pathankot for arriving at this conclusion is as follows:-

i. Appellant – accused had taken specific plea that cheque Ex.C1 was not supported by any consideration and he was not having any legal liability towards respondent – complainant to pay the cheque amount which had given as security at the time of inception of chit fund scheme transactions between the parties.

ii. During recording of statement under Section 313 appellant – accused brought upon record copy of reply Ex.A1 and A9 as sent by him to notice Ex.C8 issued by respondent – complainant to him by post. Similarly appellant - accused had *also brought on record passbook of chit fund scheme of respondent – complainant Ex.A4 to A8 and when Ravinder Singh Basra CW-3 was confronted with pass-books Ex.A4 to A8 he admitted that those were issued by respondent – complainant to maintain the record of loan transaction though denying that those related to chit fund scheme as per case of appellant – accused.*

iii. As per said passbook it had been issued by respondent – complainant with respect to account of M/s Jeevan Electrical Works and as per entries therein the transactions held way back from the year 1997 till year 2002 and small amounts of money ranging from ₹50/- to ₹400/- were deposited on daily basis by appellant – accused. However, the examination-in-chief of Ravinder Singh Basra as CW-3 and other evidence led by complainant – respondent were completely silent about transaction of those passbook, neither in the pleadings nor during evidence of complainant it had been dilated as to how much loan was advanced and as to in which manner it was disbursed to appellant – accused and as to whether any document was prepared at the time of advancing of such loan to appellant – accused by respondent – complainant. In para No.34 of the judgment the First Appellant Court while referring to cross-examination of Ravinder Singh Basra as CW-3 has observed that he has made certain revelations regarding such loan transaction and relevant part thereof had been reproduced as under:-

> *".... I gave ₹3 lakh loan to Surinder Kumar which was given in the year 1997-98 but I cannot tell the date, without seeing the record. I gave this loan to accused on 24% per annum interest and the documents were prepared where the signatures of accused were obtained. It is correct that these loan documents which were prepared at the time of advancement of loan are not on Court record. On demand, I can produce these documents.......... From the year 1997-98 till the filing of complaint, the appellant – accused returned approximately lot of money. But I cannot tell at this time without seeing the record. It is correct that there is no document in the Court file regarding return of loan amount but I can produce the same if so demanded. As per cheque Ex.C1, the sum of ₹5,25,000/- was due against accused. The cheque Ex.C1 was issued by accused in July 2002, which was based on said loan......."*

iv. That the complainant had withheld the best evidence with respect to document prepared at the time of advancement of loan to the appellant – accused giving rise to presumption that no such loan documents were in existence and if those were in existence their non-production goes to show that those if produced might have gone against the respondent – complainant.

v. Admission by CW-3 Ravinder Singh Basra that company was doing finance business in various States keeping record of entire business and transactions are also being recorded in income tax returns but no as such record of account books or income tax return having been brought on record thereby withholding best evidence leading to drawing of presumption that either no such account books were maintained and if maintained, same have not been produced, since the entries of such account books might have gone against the respondent – complainant.

vi. The appellant – accused in that way having successfully rebutted the statutory presumption arising under Section 118(a) and 139 of the Act in favour of the complainant.

vii. The defence plea appearing to be more probable that cheque was issued for security of money transaction between the parties as started from year 1997-98 mentioned in passbook Ex.A4 to A8. Referring to testimony of CW-1 Ravinder Singh Basra who had brought bank record of appellant – accused the First Appellate Court has observed that serial number of cheque dated 08.7.2002 Ex.C1 is 29425 and the cheque having successive serial number 29431 was used on 07.1.1999, in that way cheque in question might have been used prior to 07.1.1999 when cheque having next Sr. No. having 29431 was used corroborating the defence plea that cheque Ex.C1 was given as security way back in the year 1999 or even earlier.

viii. Admission by Ravinder Singh Basra CW-3 in his cross-examination that cheque appearing with next serial number 29426 was issued on 01.01.1998 whereas cheque bearing No.29431 was issued on 07.1.1999 as detailed in account statement Ex.C3, thus making it unbelievable that cheque bearing Sr. No.29425 was issued much after in the year 2002 when the cheque with next Sr. Nos. had been used in the year 1998-99.

The Appellant Court had concluded that respondent – complainant had miserably failed in proving that cheque in question Ex.C1 was issued to appellant – accused to discharge of his legally enforceable debt therefore, conviction and sentence of accused was not maintainable, therefore the judgment of his conviction and order of sentence passed by the trial Magistrate was set aside.

Feeling aggrieved the complainant has approached this Court by way of filing instant revision petition praying that the judgment passed by the Additional Sessions Judge, Pathankot be set aside and one passed by the trial Magistrate convicting and sentencing the accused be restored.

Notice of the revision petition was given to respondent – accused, who put in appearance through his counsel.

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

The scope of revision petition is quite limited. The revisional Court is to interfere only if the order passed by the Court below is patently illegal and perverse which means the error in the order must be apparent on the face of it and the order passed should have been in gross violation of settled principles of criminal jurisprudence. The order in hand does not suffer from any such infirmity. It is well settled principle that revisional Court is not be upset the order passed by the Court below in a light manner simply because of the reason that another view in the matter is possible.

The judgment delivered by Additional Sessions Judge, Pathankot does not come out to be suffering from any legal infirmity or illegality what to talk of such alleged illegal or infirmity being apparent on the face of it or the judgment being preserved. No ground is made out to upset the said judgment passed by Additional Sessions Judge, Pathankot exercising revisional jurisdiction, therefore, the revision petition stands dismissed.

(H.S. MADAAN)
JUDGE

01.11.2017
Gaurav Sorot

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**