

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 2137-2016 (O&M)
Date of decision: 13.12.2017

Amit Sharma

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Tushar Dixit and Mr.Vishal, Advocates for the petitioner
Mr.Pawan Garg, Assistant Advocate General, Haryana
Mr.Amandeep Singh, Advocate for
Mr.J.P.Jangu, Advocate for respondent no.2

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

This is revision petition against the judgment 24.5.2016, passed by learned Additional Sessions Judge, Rewari affirming the judgment of conviction and order of sentence dated 14.6.2013 passed by learned Judicial Magistrate First Class, Rewari, vide which, the present petitioner was convicted for commission of an offence punishable under Section 138 of Negotiable Instruments Act, 1881 and was sentenced to undergo Simple Imprisonment for six months and to pay compensation to the tune of Rs.1,40,000/- under Section 357 of Code of Criminal Procedure within a period of two months from the date of passing of the judgment. It was further directed that if compensation amount is not paid within time, the same shall be recoverable under the provisions of Section 421 Cr.P.C.

The facts of the case are that according to the complainant,

accused petitioner in the discharge of legally enforceable debt, issued a cheque bearing No.070029 dated 10.11.2007 for Rs.70,000/-, drawn on UTI Bank Limited (now succeeded by Axis Bank). On 28.1.2008, the cheque was presented to the drawee bank for clearance but was dishonoured by the bank with the remarks 'insufficient funds'. Thereafter, the complainant issued a legal notice on 29.1.2008 and thereafter filed the complaint.

I have heard learned counsel for both the parties and have also carefully perused the record.

Learned counsel for the petitioner has argued that in this case the ingredients of Section 138 of Negotiable Instruments Act, 1881 are not proved. Legally enforceable debt is also not proved. It is further stated that notice does not bear the signatures of anybody and was issued before dishonouring of the cheque. The perusal of the original cheque shows that it is filled in and signed in the same handwriting by the accused for a firm Shree Caterer. The cheque is stamped and signed by the accused-petitioner on the front side as well as at two places on the backside, indicating that the intention of the accused was that the cheque should be honoured on presentation. It was a local cheque. Memo dated 28.1.2008 shows that UTI bank dishonoured the cheque for want of sufficient funds. The legal notice Ex.PC bears the date 29.1.2008. However, at the bottom, date 29.10.2007 has been mentioned, which appears to be a clerical mistake. Learned counsel for the petitioner contends that the notice is not signed by anybody. However, fact remains that Shri Vivek Tanwar Advocate issued the notice on behalf of his client. Further there is a postal receipt with the same, showing that the notice was despatched. Then there is an acknowledgment Ex.PD of the postal authorities bearing the signatures of the accused

petitioner showing that it was received by him. Therefore, merely because of some clerical error in the date on the legal notice and some omission, it cannot be said that the notice issued to the petitioner was not valid and was issued before the receipt of the memo of dishonouring of the cheque. It is to be noted that in the notice, it is mentioned that the cheque was received with the memo of the bank dated 28.1.2008. Meaning thereby that the notice was issued thereafter. Once, it is proved that the cheque was issued for legally enforceable debt, burden shifts on the accused to prove that he did not owe the money. The manner in which the cheque was signed and stamped by the accused on behalf of the firm at one place in the front and two places on the back, goes to show that the cheque was issued with the intention that it should be honoured.

Both the Courts below have come to the conclusion that legally enforceable debt is proved. There is no reason for the complainant to forge the cheque. There is no reason to differ with the concurrent findings of facts recorded by both the Courts below.

It being so, I do not find any merit in the same. The same is accordingly dismissed.

Petitioner be re-arrested to undergo the remaining part of sentence.

13.12.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No