

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR-2770-2016 (O&M)

Date of decision : 03.03.2017

Suraj Sharma

...Petitioner

Versus

Arun Katoch

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. Ram Bilas Gupta, Advocate,  
for the petitioner.

Mr. Vikas Kumar, Advocate,  
for the respondent.

Mr. Neeraj Poswal, Deputy Advocate General, Haryana.

**JITENDRA CHAUHAN, J. (ORAL)**

By filing the present criminal revision, the petitioner has assailed the judgment dated 27.05.2016, vide which Additional Sessions Judge, Faridabad, upheld the judgment dated 18.05.2015 and order dated 21.05.2015 passed by Judicial Magistrate I<sup>st</sup> Class, Faridabad, whereby, the petitioner was convicted under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') and sentenced to undergo simple imprisonment for one year along with compensation amount of Rs.18,00,000/- to be paid to the complainant within one month from the passing of the order, in default of which, petitioner was to further undergo simple imprisonment for a period of three months.

Briefly stated the complainant-respondent filed a complaint before the Court of Judicial Magistrate I<sup>st</sup> Class, Faridabad, under Section 138 of the Act. It was alleged by the complainant that he had family/friendly

relations with the accused/petitioner and on account of that, the complainant/respondent lent an amount of Rs.12,00,000/- to the accused/petitioner, out of which Rs.7,00,000/- were advanced on 16.04.2012 and Rs.5,00,000/- were advanced on 26.06.2012. Accused/petitioner had assured to return the loan within a period of one year. In discharge of his liability, the accused/petitioner issued cheque No.171227 dated 24.12.2012 drawn on Punjab National Bank, Railway Road, Old Faridabad, in favour of the complainant/respondent. When the complainant/respondent presented the said cheque for encashment through his banker, the same was dishonoured with the remarks "other reason" vide return memo dated 26.12.2013. Thereafter, the complainant got issued legal notice dated 28.12.2013 to the accused/petitioner calling upon him to make the requisite payment within 15 days. Since the amount was not paid by the accused/petitioner, the complainant/respondent had to file the complaint. On appearance of the accused, notice of accusation under Section 138 of the Act was issued to the accused/petitioner to which he did not plead guilty and claimed trial.

In order to prove his case, the complainant/respondent examined S.K.Uppal as CW1, himself appeared as CW-2, Vijay Raj as CW3 and Pradeep Singh as CW4 and tendered documents, Ex.C1 to C11, 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/petitioner which he denied and pleaded false implication. In defence, accused/petitioner himself

appeared as DW1 and thereafter, closed his evidence.

After hearing learned counsel for the parties, learned trial Court held the accused/petitioner guilty under Section 138 of the Act and convicted him accordingly.

Feeling aggrieved against the judgment and order dated 18.05.2015 and 21.05.2015, respectively, passed by Judicial Magistrate I<sup>st</sup> Class, Faridabad, the accused/petitioner preferred an appeal before the Additional Sessions Judge, Faridabad. The said appeal was dismissed vide judgment dated 27.05.2016.

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

Learned counsel for the petitioner contends that the judgment and order passed by the learned courts below are based on conjectures and surmises and that the Courts below fell in error in not appreciating the facts of the case. He further contends that the petitioner had borrowed an amount of Rs.1,00,000/- only and not Rs.12,00,000/- from the complainant/respondent and the cheque in question was a signed blank cheque given as security and the loan amount of Rs.1,00,000/- was repaid by the petitioner on 21.10.2013. He further contends that the complainant/respondent was not having any licence under the Money Lender Act and without the licence of said Act, complainant/respondent could not have given such a huge loan to any person. He further contends that the learned Courts below have failed to consider that no income tax return was proved on record by the complainant/respondent to show that this huge amount was given to the petitioner. Therefore, he prays that the judgment passed by the learned

Courts below be set aside and the petitioner be acquitted.

On the other hand, learned counsel for the respondent contends that the judgment and orders passed by the learned Courts below are well reasoned and justified and does not call for any interference.

I have heard learned counsel for the parties and have also carefully gone through the record of the case.

The admission of the petitioner having signed the cheques in issue creates a presumption of legally recoverable debt against him. The presumption attached to the cheque was to be rebutted by the petitioner and he was to prove that payment of Rs.1 lac had been made by him to the complainant. However, no cogent or convincing evidence was led by the petitioner, apart from his self serving statement while appearing as DW1. Moreover, even if his version regarding repayment of loan amount is accepted as a gospel truth, he certainly would have impressed upon return of the cheque that he claims was given as security or could have issued directions to the bank to stop the payment of cheque.

In these circumstances, this Court does not find any ground to interfere with the impugned judgments, in exercise of its revisional jurisdiction, as no material evidence or any circumstance has come on record to establish that there is any defect of procedure or improper acceptance or rejection of evidence by the Court(s) below and that the impugned judgment would cause miscarriage of justice. This Court feels that the impugned order has been passed after proper appreciation of facts on record and application of judicial mind.

Consequently, the present revision petition fails and is hereby dismissed.

03.03.2017  
adhikari

(JITENDRA CHAUHAN)  
JUDGE

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|-------------------------------|-----|----|
| Whether speaking / reasoned : | Yes | No |
| Whether Reportable :          | Yes | No |