

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

CRR-3222 of 2016

Date of decision: 17.7.2017

Smt.Rajni

...Petitioner

Versus

Nirmala Devi

...Respondent

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

Present: Mr.Mukesh Rao, Advocate  
for the petitioner.

None for the respondent.

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**H.S. MADAAN, J.**

This revision petition is directed against the order dated 9.8.2016 passed by the Court of learned Additional Sessions Judge, Chandigarh vide which application under Section 391 of the Code of Criminal Procedure, 1973 filed by appellant – accused Rajni for comparison of the handwriting of the appellant with the writing on the cheque by examining the handwriting expert or through Central Forensic & Scientific Lab, Chandigarh had been dismissed.

Briefly stated, the facts of the case are that complainant – Nirmala Devi had filed a complaint under Section 138 of Negotiable

Instruments Act, 1881(hereinafter referred to as '*the Act*') against accused Smt.Rajni on the allegations that complainant on request of Smt.Rajni had advanced a sum of Rs.8,00,000/- to her for purchase of house in Sector 56, Chandigarh and accused Rajni had promised to return the said amount within one month i.e. on or before October, 2012 and such Rajni in order to discharge her existing legal liability had issued cheque No.293381 dated 26.10.2012 drawn at Haryana State Co-operative Apex Bank Ltd. However, the cheque on presentation was dishonoured not only once but twice for the reasons of funds being insufficient in the account of accused Rajni. Then complainant issued legal notice dated 24.12.2012 to the accused calling upon her to make payment within the stipulated period but to no effect, as such she (complainant) filed complaint under Section 138 of the Act against accused Rajni in the Court of Judicial Magistrate Ist Class, Chandigarh.

On presentation of the complaint, after recording preliminary evidence, accused was summoned, who put in appearance. Notice of accusation was served upon her. She pleaded not guilty and case was fixed for evidence of complainant. The case was tried as a summons case.

During the course of evidence of complainant, she got her statement recorded as CW1 wherein she tendered her affidavit Ex.CW1/A supporting her case on material points proving documents Ex.C1 to Ex.C6. Thereafter, complainant closed the evidence.

Statement of accused under Section 313 Cr.P.C. was recorded wherein incriminating circumstances were put to her, which she denied and rather stated that she had signed the cheque which was misplaced

from her residence in September, 2011 and it came in possession of complainant, who visited her residence at that time; that she had informed her bank regarding misplacing of cheque and also issued stop payment instructions. She denied having borrowed any money from the complainant or any liability towards her to make the payment of cheque amount. She led evidence in defence.

After hearing arguments, the trial Court convicted the accused under Section 138 of the Act and sentenced her to undergo imprisonment for a period of three months and to pay a fine of Rs.5,000/-. She was ordered to pay Rs.8,00,000/-, the cheque amount to complainant as compensation under Section 357(3) Cr.P.C. within a period of two months from the date of judgment, failing which, she would undergo simple imprisonment for 15 days.

Feeling aggrieved by the said judgment of conviction and sentence, accused filed an appeal in the Court of Sessions which was marked to learned Additional Sessions Judge, Chandigarh.

During pendency of the appeal, appellant – accused, who is petitioner in this Court moved an application under Section 391 of the Code of Criminal Procedure, 1973 for comparison of the handwriting of the appellant with the writing on the cheque by examining the handwriting expert or through Central Forensic & Scientific Lab, Chandigarh. That application was dismissed by the First Appellate Court vide order dated 9.8.2016, which left the appellant-accused aggrieved and she has filed the present revision petition.

Notice of the revision petition was given to respondent-

complainant, who had put in appearance. However, learned counsel for the complainant – respondent has not appeared in the Court today.

After hearing learned counsel for the petitioner at length, I am of the view that there is no merit in the present revision petition.

The High Court power of revision under Section 401 Cr.P.C. is quite limited and it is not to be exercised lightly and such power can be used only in exceptional cases where interest of public justice so require to prevent miscarriage of justice. In the instant case, the impugned order passed by the Court of learned Additional Sessions Judge, Chandigarh does not suffer from any illegality or infirmity. It has to be noted that the petitioner had an opportunity to produce such evidence in the trial Court when the case was fixed for the defence evidence but then no such evidence was brought on file. It was only in appeal before learned Additional Sessions Judge, Chandigarh that the appellant – accused moved an application 391 Cr.P.C.. The Court of learned Additional Sessions Judge, Chandigarh vide a well reasoned order, which is being impugned in the present revision had dismissed such application. The petitioner is feeling unnecessary aggrieved by the said order.

One of the argument put forth by learned counsel for the revision petitioner was that application under Section 391 Cr.P.C. so moved by the accused should have been decided along with the main appeal but it was not so done. Therefore order is bad in the eyes of law. In support of his contention, he referred to an authority **Durgesh Kumar Versus J.B. Singh and another, 2015(45) R.C.R.(Criminal) 435 by Gwalior Bench of Hon'ble High Court of Madhya Pradesh.**

I find little force in this argument. There is nothing to show that the present revision-petitioner had requested the Court of learned Additional Sessions Judge, Chandigarh to decide application under Section 391 Cr.P.C. while hearing final arguments and no prejudice could possibly be caused to the petitioner by deciding the application first. Therefore, this authority is not of much help to the case of the petitioner.

As regards, the second authority *Joseph Versus Gladis Sasi, 2010(4) CrL.Court Cases 65, wherein the Hon'ble High Court of Kerala,* while discussing Section 138, 139 and 118 of the Act, it was observed that admission of signing in the blank cheque does not amount to admission of execution of the cheque and complainant has to establish that accused had drawn the cheque and issued to him. This authority also does not come to the rescue of the petitioner. The merits of the case are not to be gone into while deciding this revision petition, unless found necessary for that purpose.

The main contention of the learned counsel for the petitioner is that the complainant in her statement recorded in Court of Magistrate had submitted that the cheque was filled in by the accused which is contrary to the factual position and to show that the comparison is necessary. However, the learned trial Court vide detailed judgment has found that petitioner – Rajni had issued the cheque in question in favour of the complainant on account of discharge of her financial liability. The appeal against that judgment is pending. As already observed the order passed by the learned Additional Sessions Judge, Chandigarh dismissing the application under Section 391 Cr.P.C. is not found to be suffering

from any illegality or irregularity, the scope of the revision petition is quite limited and while deciding the revision petition, the evidence cannot be reappraised and re-appreciated so as to find faults with the order passed by the Court below.

Thus, the revision petition is found to be without any merit and is dismissed accordingly.

Copy of the order be sent to the First Appellate Court for intimation and compliance.

17.7.2017  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**