

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

CRR-3805-2016(O&M)

Date of decision:-8.12.2017

Jagsir Singh

...Petitioner

Versus

Kewal Krishan

...Respondent

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

Present: Mr.I.S. Sidhu, Advocate
for the petitioner.

Ms.Indu Bala, Advocate for
Mr.Aditya Jain, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that complainant – Kewal Krishan had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against accused Jagsir Singh on the allegations that the complainant is running a business of commission agent under the name and style of M/s Kewal Krishan Jatinder Kumar Commission Agent, Budhlada; that the accused used to sell his crops at his shop and to obtain loan from him for agricultural purposes; that on 1.4.2011, a sum of Rs.19,000/- was outstanding towards the accused; that on 16.5.2011, accused borrowed another sum of Rs.2,08,500/- from the complainant, Rs.4 lacs on 17.5.2011, and Rs.1,00,000/- on 25.10.2011; that all the payments had been made by the complainant to the accused through cheques; that on

22.4.2011, the accused sold his crop of value of Rs.18,949.56 and on 9.5.2011, wheat crop of the value of Rs.1,89,495.60 and on 22.10.2011 sold another crop for Rs.45,386.80; that on 31.3.2011 after calculations and accrued interest, a sum of Rs.5,56,668.04 was outstanding towards the accused; that on 5.4.2012, 9.5.2012 and 29.5.2012, accused borrowed a sum of Rs.30,000/-, Rs.26,000/- and Rs.15,000/-, respectively, therefore as on 29.5.2012, an amount of Rs.5,86,668/- was outstanding; that to discharge that liability, the accused issued a cheque No.121760 in the sum of Rs.6 lacs dated 27.6.2012 drawn on State Bank of Patiala, Branch Budhlada in favour of the complainant; that the complainant accordingly presented that cheque to his banker Punjab National Bank, Budhlada, which in turn sent it to banker of the accused but the cheque was received back uncashed with memo of the banker of accused dated 28.6.2012 having remarks "Insufficient Funds"; that thereafter the complainant issued a legal notice dated 10.7.2012 to the accused calling upon him to make the payment within 15 days from the date of receipt of the notice but the accused did not make payment within the stipulated period, as such the complainant had filed a complaint before Sub Divisional Judicial Magistrate, Budhlada on 2.8.2012.

After recording of the preliminary evidence, the accused was summoned, who put in appearance and was 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 his evidence, the complainant himself appeared as CW1 and further examined Jagga Singh an official from State

Bank of Patiala Budhala as CW2.

With that the evidence of the complainant was closed.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him pleaded false implication.

During his defence evidence, the accused examined Gurpreet Singh son of Puran Singh as DW1 and Jagsir Singh son of Ranjit Singh as DW2.

Thereafter, the defence evidence of accused stood closed.

After hearing arguments, learned trial Magistrate convicted the accused for the offence under Section 138 of the Act sentencing him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default of making payment of fine, to undergo further imprisonment for a period of two months.

Feeling aggrieved, the accused had filed an appeal to the Court of Sessions, which was also dismissed by learned Additional Sessions Judge, Mansa vide order dated 30.8.2016, as such, he has knocked at the door of this Court by way of filing of the present revision petition.

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

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the revision petition.

The trial Magistrate by proper appreciation of evidence adduced on the file by the complainant and correct interpretation of law

has come to the conclusion that accused had issued the cheque in question in favour of the complainant on account of discharge of a financial liability, which on presentation was returned uncashed due to insufficiency of funds in the account of accused and since he had failed to make the payment of the cheque amount within 15 days of the receipt of legal notice, the complainant was well within his rights to file a complaint under Section 138 of the Act against the accused and all the necessary ingredients of the said offence are proved on the file. The lower Appellate Court had found itself in agreement with the trial Magistrate.

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. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, as regards the conviction and sentence part, those are upheld and revision is found to be without any merit and is dismissed accordingly.

Necessary intimation be sent to the quarter concerned.

8.12.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No