

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

**CRR No.3861 of 2016 (O&M)
Date of Decision: 15.2.2017**

SANTOKH SINGH

.....Petitioner

Vs

M/S SONDHI RAM GIAN CHAND AND ANR

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Fariad Singh Virk, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

In this revision petition, challenge has been made to judgment dated 6.8.2016, passed by Additional Sessions Judge, Patiala, whereby appeal filed against the judgment of conviction and order of sentence dated 9.3.2016 passed by Judicial Magistrate, Ist Class Patiala was dismissed.

Respondent No.1-complainant filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short 'the Act') with the allegations that he had business transactions with the accused-petitioner. In discharge

of outstanding liability, accused-petitioner issued a cheque in question from his account for a sum of ₹ 2,80,000/- drawn on Oriental Bank of Commerce in favour of the complainant. The accused-petitioner assured the complainant that the cheque would be honoured on presentation to the bankers of the accused. The cheque was presented through the banker, but the same was dishonoured with the remarks "Funds Insufficient". Thereafter, legal notice was sent to the accused, requiring him to make the payment within prescribed period of 15 days from the date of receipt of notice, but the accused-petitioner failed to pay the amount in question. The complaint was filed accordingly.

Complainant led preliminary evidence. After appraisal of evidence accused was summoned and thereafter, notice of accusation under Section 138 of the Act was served upon the petitioner, to which he pleaded not guilty and claimed trial.

Thereafter, on the basis of incriminating evidence led by the complainant, trial Court convicted the petitioner for the offence under Section 138 of the Act and accordingly, he was sentenced to undergo rigorous imprisonment of 10 months and compensation equivalent to ₹ 50,000/- vide judgment and order dated 9.3.2016.

Feeling aggrieved against the said judgment of

conviction and order of sentence, the accused-petitioner filed an appeal before the lower Appellate Court. The lower Appellate Court has noticed the fact that the cheque was delivered to the complainant and the same gave rise to a presumption in favour of the complainant. The accused did not lead any evidence and failed to rebut statutory presumption as his defence was not found to be satisfactory. The accused made a statement during the appeal without any pressure that the cheque was issued by the accused in discharge of legal liability and he admitted that he will pay the amount in question to the complainant and prayed for some time. Thereafter, case was fixed for 2.7.2016, 16.7.2016 and for 6.8.2016 when the appeal was dismissed in absentia.

Apparently, after having made a statement, petitioner did not honour the same and preferred to remain absent consecutively for three dates. The Court found that the cheque was issued in discharge of liability and the same was dishonoured on being presented. The appeal preferred by the petitioner was dismissed by the lower Appellate Court in his absence on 6.8.2016. Petitioner at the time of filing present revision petition did not surrender. In a way, petitioner is at large and for securing his presence, coercive methods are in offing.

In view of above, no indulgence can be granted in favour of the petitioner who has no respect for law. After having suffered a statement before the lower Appellate Court that he will pay the amount to the complainant, petitioner did not appear on three consecutive dates and preferred to remain absent. Since the admission of guilt has been made by the petitioner in the context of issuance of cheque in discharge of his liability, this Court feels that no indulgence can be granted on the merits of the case. After filing of the revision petition, the same was adjourned on 20.10.2016, 27.10.2016, 9.11.2016 and 18.1.2017 when last opportunity was granted to learned counsel for the petitioner to address arguments.

Today, factum of the petitioner being at large came to the notice. Learned counsel for the petitioner tried to address arguments on merits of the case, which in considered opinion of this Court cannot be appreciated in view of admission made by the petitioner before the lower Appellate Court that the cheque was issued in discharge of his legal liability and, thereafter, at his instance time was given for making payment of the due amount to the complainant. Despite three consecutive opportunities, nothing was paid to the complainant and the appeal was decided in absentia of the petitioner. In exercise of powers under Section 401 of the Cr.P.C., the legality and

proprietary of the order are to be tested. There cannot be any re-appreciation of evidence on record.

No law point worth cognizance of this Court is involved in this revision petition, the same is accordingly dismissed.

**(RAJ MOHAN SINGH)
JUDGE**

February 15, 2017
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No