

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

1. CRR No.3956 of 2016 (O&M)

Date of Decision: 24.04.2017

Harbhajan Singh

--Petitioner

Versus

Narinder Kumar & another

--Respondents

2. CRR No.3963 of 2016 (O&M)

Harbhajan Singh

--Petitioners

Versus

Naresh Kumar and another

--Respondents

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. Sanjeev Goyal, Advocate for the petitioners.

Mr. P.S. Grewal, D.A.G., Punjab.

Mr. J.K. Singla, Advocate for respondent no.2.

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**TEJINDER SINGH DHINDSA.J**

This order shall dispose of CRR No.3956 of 2016 (Harbhajan Singh Vs. Narinder Kumar & another) and CRR No.3963 of 2016 (Harbhajan Singh Vs. Naresh Kumar & another). Both these petitions have been taken up together as they involve the same parties. CRR No.3956 of 2016 arises out of the concurrent conviction of Harbhajan Singh under Section 138 of the Negotiable Instruments Act, 1881 in Criminal Complaint No.86 of 15.6.2011 initiated at the hands of Narinder Kumar, respondent. CRR No.3963 of 2016 is also directed against the concurrent conviction of Harbhajan Singh under Section 138 of the Negotiable Instruments Act in pursuance to Criminal Complaint No.87 of 15.6.2011 lodged by Naresh Kumar, respondent.

Briefly, it may be noticed that Criminal Complaint No.86 of 15.6.2011 was made by respondent Narinder Kumar on the premise that a

cheque bearing no.228931 dated 17.4.2011 for a sum of Rs.1 lac had been given by the accused/petitioner Harbhajan Singh towards payment of lease money in respect of the land situated at Village Bald Kalan on lease from the complainant. Such cheque upon presentation was dishonored. The bank memo dated 16.5.2011 recited the reason for dishonor of the cheque as **“insufficient funds”**. Notice was served upon the complainant but the same was not responded and neither was the payment made good. The trial culminated in passing of judgement and order of sentence dated 22.2.2014, passed by the A.C.J.M., Sangrur convicting Harbhajan Singh under Section 138 of the Negotiable Instruments Act and he was awarded sentence of 1 year R.I and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo RI for one month. Appeal preferred by Harbhajan Singh/present petitioner has been dismissed by learned Additional Sessions Judge, Sangrur vide judgement dated 5.9.2016. Such backdrop has led to the filing of Criminal Revision No.3956 of 2016.

Criminal Complaint No.87 of 15.6.2011 was made by respondent Naresh Kumar against Harbhajan Singh, petitioner under identical state of affairs. The cheque in question was bearing no.228932 dated 17.4.2011 and for the same amount i.e. Rs.1 lac towards lease money for the land taken on lease from the complainant. The cheque having been dishonored, proceedings under section 138 of Negotiable Instruments Act were initiated. Conviction in Criminal Complaint No.87 of 15.6.2011 was also recorded by the Trial Court on the same date i.e. 22.2.2014 under Section 138 of Negotiable Instruments Act and the petitioner Harbhajan Singh was sentenced in such complaint also to undergo RI for a period of 1 year and to pay a fine of Rs.5,000/- and in default of payment thereof to

further undergo RI for a period of one month.

Appeal preferred by Harbhajan Singh stands dismissed vide judgement dated 5.9.2016 by the learned Additional Sessions Judge, Sangrur. This has led to the filing of CRR No.3963 of 2016.

Counsel for the parties have been heard at length.

This Court finds that the judgement of conviction recorded against the petitioner in both the complaints and under identical allegations is based on due appreciation of evidence and on valid and cogent reasoning.

The cheques in question in both the complaints and for identical amount of Rs.1 lac was Ex.C-3 and duly proved. There is no dispute as regards the cheque carrying the signatures of the petitioner. The complainant in both these cases have also been able to prove in accordance with law Ex.C-7 which was a document reduced in writing reflecting that the petitioner had taken land on lease from the complainant/respondent and the cheque in question had been issued towards discharge of his liability of payment of lease money. The courts while recording a concurrent judgement of conviction have found the ingredients of Section 138 of Negotiable Instruments Act to have been satisfied. Furthermore, the petitioner has not been able to rebut the presumption that had arisen in favour of the complainant in terms of Section 139 of the Act. The plea taken by the accused/present petitioner as regards the cheques having been given towards security has been rightfully disbelieved. Petitioner before the Trial Court had placed reliance upon a complaint made to the S.S.P concerned on 21.1.2013 as regards misuse of the cheque. Such plea has been discarded by taking note of the fact that the complaints in both these cases had been lodged under the Negotiable Instruments Act much prior in

point of time i.e. On 15.6.2011, whereas the complaint made to the S.S.P concerned by the accused/present petitioner on 21.1.2013 was nothing but an after thought as also a counter blast to the proceedings that had already been initiated under the Negotiable Instruments Act.

Even learned counsel during the stage of arguments in these two connected revision petitions has not been able to raise any substantial argument to assail the conviction on merits. Rather an order dated 17.12.2016, passed by this Court in both these connected petitions may be adverted to and which reads as follows:-

*“Learned counsel for the petitioner states that the petitioner is ready to pay Rs.1,50,000/- to the respondent no.2 in order to discharge his total liability. He further states that the petitioner undertakes to pay Rs.1 lac on or before 22.12.2016 and the balance amount of Rs.50,000/-by the end of March, 2017.*

*Learned counsel for respondent no.2 accepts this offer and states that let the petitioner should show his bonafide by making the payment of Rs.1 lac on or before 22.12.2016.*

*Adjourned to 22.12.2016.*

*Photocopy of this order be placed on the file of other connected case.”*

The requisite amount as afore-noticed in the light of the undertaking furnished has admittedly not been paid by the petitioner. In any event the offer made by the counsel as regards readiness and willingness to pay Rs.1,50,000/- to the complainant/respondent in discharge of the entire liability would in itself support the judgement of conviction. It would also be apposite to note that even before the Appellate Court the statement of Harbhajan Singh (present petitioner) had been recorded on 17.3.2016 with regard to his readiness and willingness to pay Rs.75,000/- as full and final

settlement in proceedings in relation to Complaint No.87 of 15.6.2011. Similar statement had been recorded before the Appellate Court of the accused/present petitioner even as regards Complaint No.86 of 15.6.2011.

The petitioner, as such, has resiled from the statements recorded before the Appellate Court as also before this Court as regards discharge of his liability and towards full and final settlement of the matter.

This Court does not find any ground that would call for intervention against the concurrent conviction of the petitioner for offence under Section 138 of the Negotiable Instruments Act in exercise of its revisional jurisdiction.

Both the revision petitions are accordingly dismissed.

**(TEJINDER SINGH DHINDSA)**  
**JUDGE**

**24.04.2017**

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Whether speaking/reasoned: Yes  
Whether Reportable: Yes