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

CRR-1397-2017 (O&M)
Date of decision: 17.07.2017

Balwant Singh

…..Petitioner

versus

Ved Parkash and another

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Harpreet S. Rakhra, Advocate for the petitioner
Mr.Rajbir Singh, Advocate for the respondent no.1
Mr.R.K.Makkad, Deputy Advocate General, Haryana

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

<u>Kuldip Singh, J.</u>

The present revision petition is directed against the concurrent findings recorded by the two Courts below, whereby the petitioner was convicted for commission of an offence punishable under Section 138 Negotiable Instruments Act, 1881 and sentenced to undergo Imprisonment for one year and to pay compensation to the tune of Rs.10,000/-.

Facts of the case are that according to the complainant, accused had taken a cash loan of Rs.six lakhs from him and in the discharge of his legal debt, he issued a cheque no.678680 dated 5.6.2014 drawn on Punjab and Sindh Bank, New Grain Market, Nabha. The cheque on presentation was dishonourned on account of "insufficient funds". After issuing the legal notice, which remained unresponded, the present complaint was filed.

After recording the preliminary evidence, the accused / petitioner was summoned. Thereafter the complainant led his evidence. In the statement under Section 313 Cr.P.C., accused took the following stand:-

"I am innocent and has been falsely implicated in this case. The complaint is false. Present complaint has been filed by complainant against me only to harass and grab the amount. I have never received any loan amount, as alleged in the complaint and never given any cheque to the complainant. The present cheque in question is a result of fraud."

Accused did not lead any evidence in defence.

After hearing both the parties and going through the evidence, learned Judicial Magistrate First Class, Nabha vide judgment of conviction and order of sentence dated 13.7.2015 sentenced the accused as aforesaid. Appeal against the said judgment was dismissed by learned Additional Sessions Judge, Patiala vide judgment dated 14.2.2017.

I have heard learned counsel for the parties and have also carefully perused the record.

Learned counsel for the petitioner has argued that in this case, a loose cheque was issued by the bank on 12.11.2009. It is stated that the petitioner was a client of the commission agent firm of the complainant and that his account was opened on 11.5.2007, as admitted by Shri Prince (CW2). Therefore, the said loose cheque has been misused.

I am of the view that in the statement under Section 313 Cr.P.C., it was never pleaded that the loose cheque was handed over to the complainant and that the complainant had got his account opened in the said bank and that the cheque has been misused. The cheque shows that it bears the signatures of the accused. Though the cheque might have been issued on 12.11.2009 but it can be used at any time. Therefore, there is no reason for the accused to sign the blank cheque and hand over the same to the complainant unless there are reasons for the same. Plea of fraud taken under Section 313 Cr.P.C. is not proved. The statement of Shri Prince shows that the complainant never introduced the account opening by the accused. The petitioner while appearing as CW1 was thoroughly cross-examined. He stated that he was doing the business of commission agent before 2008. His father died in the year 2011. However, in the year 2008-2009, his father had divided the business between two brothers. Now he is running the business of warehousing of godowns and shellers. It is not the case of the accused that he had handed over the blank cheque to the brother of the complainant and that the same has been misused.

Learned counsel for the complainant has relied upon the accounts book which was produced from the complainant. Learned counsel for the petitioner has argued that as per entry dated 5.6.2014 of Rs.6,23,245/- are shown to be pending out of which Rs.six lakhs are received and balance is Rs.23,245/-. The same entry is carried forwarded on 6.6.2014. It is stated that the loan was not shown in the income tax return of the petitioner. Plea of payment was never taken by the accused at any stage. Therefore, the same cannot be accepted at this stage. In fact the accused had stated that it is a case of fraud and that he never took any loan. Therefore, taking of the loan and payment thereof cannot be pleaded at this stage.

In view of the matter, I am of the view that there are concurrent findings of two Courts below. There is no illegality or infirmity in the same. Hence, the findings are confirmed. Consequently, the present revision is dismissed.

17.07.2017 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: No