

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

CRR-1992-2017(O&M)

Date of decision:-22.11.2017

Archna Bakshi

...Petitioner

Versus

Pawan Kumar

...Respondents

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

Present: Mr.Abhay Kumar Sharma, Advocate
for the petitioner.

None for the respondent.

H.S. MADAAN, J.

Complainant Pawan Kumar had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as *the Act*) against Archna Bakshi, Director of M/s AVI TRADECOM PVT. LTD. on the allegations that to discharge an exiting and outstanding liability, accused Archna Bakshi had issued account payee cheque bearing No.510683 dated 31.8.2011 in the sum of Rs.8,13,000/- drawn on Punjab National Bank, Sector-10, Dwarka, New Delhi in favour of complainant giving an assurance that same would be encashed, but on presentation the cheque was returned uncashed by the banker of accused along with the memo dated 4.11.2011 having endorsement "Funds Insufficient"; that

the complainant was informed accordingly; that he served statutory notice upon the accused calling upon her to make the payment of the cheque amount within 15 days of receipt of notice but to no effect, as such, he filed a complaint in question in the Court of Judicial Magistrate Ist Class, Hisar.

After recording preliminary evidence, the accused was summoned. She put in appearance and was admitted to bail, notice of accusation under Section 138 of the Act was served upon her, to which, she pleaded not guilty and claimed trial.

During the course of his evidence, the complainant himself appeared as PW1 and submitted his duly sworn affidavit Ex.PW1/A besides producing documents Ex.P1 to Ex.P7 including original cheque Ex.P1, bank memos Ex.P2 and Ex.P3, legal notice Ex.P4 and postal receipt Ex.P5.

With that evidence of the complainant stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against her in the evidence of the complainant were put to her but she denied the same contending that the complaint is false one and the witnesses were deposing falsely.

No evidence in defence was led by the accused.

After hearing arguments, learned trial Magistrate convicted the accused of offence under Section 138 of the Act vide judgment dated 1.12.2014 and vide order dated 3.12.2014, she was sentenced to undergo rigorous imprisonment for a period of nine months and to pay a fine of

Rs.2,000/- and in default thereof, to undergo further simple imprisonment for a period of three months. Fine is said to have been paid.

The accused challenged judgment of her conviction and sentence order by way of filing appeal in the Court of Sessions, which was, however, dismissed by learned Additional Sessions Judge, Hisar vide judgment dated 10.5.2017, which left her aggrieved and she has filed the present revision petition.

Notice of the revision petition was issued to the respondent, who initially put in appearance through counsel but later on absented.

I have heard learned counsel for the revision petitioner besides going through the record.

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 interference with such judgment is to be done.

Here I do not find any patent illegality or infirmity in the judgments passed by the Courts below, which might have called for interference by this Court while exercising the revisional jurisdiction. Similarly such judgments can certainly be not termed as perverse or having been passed in violation of settled principles of criminal jurisprudence, rather the same are based upon proper appraisal and appreciation of evidence and correct interpretation of law. The complainant by leading cogent and convincing evidence has been able to establish that the cheque in question had been issued by the accused in

favour of the complainant on account of discharge of a legally enforceable liability, which on presentation was returned uncashed due to insufficient funds in the account of accused and that the accused had failed to pay the cheque amount within 15 days of receipt of legal notice got served by the complainant upon her. The necessary ingredients of offence under Section 138 of the Act stood proved.

Learned counsel for the revision petitioner has contended that the accused has no concern with M/s AVI TRADECOM PVT. LTD., which concern has not been impleaded as a party, as such complaint against the accused is not maintainable. However, this contention has been dealt with by learned trial Magistrate in detail and by giving proper reasoning, the same has been rejected. I find myself in agreement with the trial Magistrate on that point. The judgments passed by the Courts below are upheld as regards the conviction part.

However, regarding sentence part, learned counsel for the petitioner has pointed out that accused is married having two children to look after; that she is residing separately from her husband and is the sole earning member in the family, as such, she be dealt with leniency.

No previous conviction against the accused has been alleged or proved. She is stated to be in custody for the last more than six months.

I find that ends of justice would be squarely met if the petitioner is sentenced to imprisonment already undergone by her, while in custody in the present case.

As far sentence part is concerned, the impugned judgment is modified and the petitioner is sentenced to imprisonment already

undergone by her, whereas the fine part is kept as such.

As such the revision petition challenging the impugned judgments stand disposed of with above modification in sentence.

The petitioner who is stated to be in custody is ordered to be released forthwith, if not required in any other case.

Necessary intimation be sent to the quarter concerned.

22.11.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No