IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRIMINAL REVISION NO.4291 of 2017 (O&M)
Date of Decision: 21.11.2017

Gurdev Singh ... Petitioner

versus

Manjit Singh ..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Harmandeep Singh Saini, Advocate, for the petitioner.

RAMENDRA JAIN, J.

1. Through this revision, the petitioner has assailed the impugned judgment dated 18.8.2017 of the lower appellate court, dismissing the appeal of the appellant, thereby affirming the judgment of conviction and order of sentence dated 22.08.2016 of the trial court under section 138 of the Negotiable Instruments Act, 1887 (hereinafter referred to as "the Act") in the following terms:-

1. Under Section 138 of the Act	Rigorous Imprisonment for a period of 15 months and pay a fine of Rs.6000/-. In default thereof, further simple imprisonment for one month.

2. The facts, as projected in the complaint case before the trial court, are that the petitioner advanced a loan of Rs.6,00,000/- from the respondent, which he promised to repay the same on its demand. The petitioner, in order to discharge his legal liability, issued a cheque bearing no. 836389 dated 25.3.2015 to the tune of Rs.6,00,000/- drawn at Punjab National Bank,

Ferozepur from his account no.4829000100007623 in favour of the respondent. The respondent presented the same for encashment with his banker, UCO Bank, Ferozepur, for realisation of the cheque amount in his account, but it was dishonoured with the remarks “account closed”. After the said cheque was dishonoured, the respondent again approached the petitioner, but he did not make the payment. On 27.4.2015, a registered legal notice was served upon the petitioner under section 138 of the Act, through his counsel Shri Harish Thakur, Advocate, Ferozepur, but till date, he did not pay any heed to make payment of the loan amount to the respondent.

3 The respondent, in his preliminary evidence, besides examining himself as CW1, tendered certain documents, such as, sworn affidavit Ex.CW1/A, original cheque Ex. C1, bank memo Ex.C2, copy of legal notice Ex.C-3, its postal receipt Ex.C4, reply to legal notice Ex.C-5 and counter reply Ex.C-6.

4 The trial court, on finding a prima facie case, summoned the petitioner under section 138 of the Act. On his appearance, the petitioner was served with a notice of accusation under section 138 of the Act, to which he pleaded not guilty and claimed a trial.

5 The respondent-complainant Manjit Singh, in order to substantiate his case, stepped into the witness box as CW1 and tendered into evidence his affidavit Ex.CW1/A, original cheque Ex.C1, bank memo Ex.C2, copy of legal notice Ex.C3, its postal receipt Ex.C-4, reply to legal notice Ex.C-5, counter reply Ex.C-6 and thereafter closed his evidence.

6 The statement of the petitioner was recorded under section 313, Code of criminal Procedure, putting all incriminating evidence appearing

against him on the record,to which he denied. He, however, pleaded to lead evidence in defence. In defence, the petitioner examined himself as DW1 and proved certified copy of FIR no.33 dated 22.3.2014 registered under sections 341/506/148 and 149 IPC and section 25/27 of the Arms Act, at Police Station Kulgarhi as Ex.D-1. He also examined Surjit Singh as DW2 and tendered attested copy of application moved by accused Gurdev Singh as Ex.D-2.

7 The learned trial court, after appraisal of the evidence on record and hearing arguments for both the sides, convicted and sentenced the petitioner as referred to above in the opening paragraph of this judgment. In appeal, the appellant remained unsuccessful as the learned lower appellate court dismissed his appeal, affirming the conviction and sentence recorded by the trial court.

8 Learned counsel for the petitioner has vehemently contended that the respondent has not been able to prove on record his financial capacity as to how he managed to give such a huge amount of Rs.6,00,000/- to the petitioner without charging any interest. On 22.3.2014, a criminal case under sections 341/506/148 and 149 IPC and 25/57/59 of the Arms Act was got registered by Lakhvir Singh against respondent-complainant Gurmit Singh @ Manjit Singh, his brother Major Singh and other persons at Police Station Kulgarhi, in which he was an eye witness to the occurrence and therefore, the respondent and his family members were nursing a grudge against the petitioner. Both the learned courts below did not appreciate that in 2013, respondent Manjit Singh had good visiting terms with Harjinder Singh, proprietor of M/s Saab Commission Agency and the petitioner had handed over two blank cheques to Harjinder Singh as security, which the

respondent had succeeded in securing from Harjinder Singh with the sole motive to cheat the petitioner.

9 Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this court is of the view that the instant revision, being without any merit, deserves to be dismissed for the reasons to follow:-

10 In order to substantiate his allegations, the respondent appeared in the witness box as CW 1 and deposed that the petitioner had borrowed a loan of Rs.6,00,000/- from him in the month of January, 2015 for a period of three months with the assurance to repay the same. The petitioner, in order to discharge his liability to repay the said loan amount, had issued a cheque duly signed by him bearing no.836389 dated 25.3.2015 for an amount of Rs.6,00,000/- drawn at Punjab National Bank, Ferozepur from his account no.4829000100007623. On 7.4.2015, the respondent presented the cheque for encashment, through his banker, namely,UCO Bank, Ferozepur, but the same was returned with a memo "account blocked". The respondent, in support of his assertion proved on record the cheque Ex.C1 and return memo Ex.C2. This witness was cross-examined at length, but nothing could come out in favour of the petitioner. On a perusal of the statement of the respondent, it transpires that the cheque Ex.C1 issued by the petitioner in favour of the respondent was only to discharge his liability to pay back the loan amount, but it was dishonoured with the remarks "account blocked". Thereafter, the respondent served a legal notice upon the petitioner asking him to make payment of the loan amount within the stipulated period. The respondent, while appearing in the witness box as CW1, proved legal notice dated 27.4.2015 Ex.C3 through registered post

and in this regard, he has also proved on the file postal receipt Ex.C4. In such circumstances, it can easily be inferred that the petitioner had issued cheque Ex.C1 duly signed by him in favour of the respondent to discharge his legal liability and debt towards the respondent. In addition to this, both the learned courts below have elaborately dealt with the point in issue giving sound reasoning therein. Therefore, the findings recorded by the courts below do not call for interference.

11 The question that arises for consideration is that the respondent did not disclose his source of income as to how did he arrange for such a huge amount and gave it as a loan and that too without charging any interest from the petitioner notwithstanding the fact that he had no cordial relations with the petitioner, inasmuch as he was an eye witness to the occurrence in a case FIR No.33 dated 22.3.2014 registered by Lakhvir Singh against the respondent. A perusal of cross-examination of the respondent clearly reveals that his income from the workshop was approximately Rs.2 lac per month. He also deposed that he had sold two bore machines and his yield and collected the amount of Rs. 6,00,000/-. Therefore, keeping in view the categorical explanation furnished by the respondent during his cross-examination, it can easily be deduced that the respondent had the financial capacity to lend the loan amount to the petitioner. The contention of the learned counsel that the respondent has not been able to prove his financial capacity, in the considered opinion of this court, does not find favour with this court, keeping in view the statement of the respondent that he had sold two bore machines and collected this amount. That apart, more significantly, the petitioner, at any stage of the case, did not deny the issuance of cheque or his signatures thereon in favour of the respondent. Therefore, it can be

very well presumed that the cheque duly signed by him was issued in favour of the respondent. The findings recorded by both the learned courts below that the petitioner has not been able to rebut the legal presumption drawn against him under Section 139 of the Act, in my considered opinion, are correct and do not call for interference.

12 In the instant case, the petitioner has tried to establish his defence by appearing into the witness box as DW1 and proved FIR Ex.D1. The respondent, during his cross-examination, has admitted the registration of said FIR against him. It is also evident from the FIR that the petitioner was one of the eye witnesses to the said occurrence, but it was argued on behalf of the learned counsel for the respondent before the trial court that the FIR had been cancelled. In order to substantiate the plea of cancellation of registration of FIR, the main complainant of the FIR namely, Lakhvir Singh was not examined by the petitioner. Had Lakhvir Singh been examined by the petitioner in his defence, he would have definitely disclosed about the outcome of the FIR, but for the reasons best known to the petitioner, he was not produced in the witness box, though the FIR was the real bone of contention on which the defence of the petitioner hinges. Even DW2 Surjit Singh, who deposed in favour of the petitioner, could not be able to tell as to what happened with the said FIR whether the same had been cancelled or not. In such circumstances, it can safely be concluded that the petitioner could not be able to show his enmity with the respondent by producing his evidence in defence.

13 The story put-forth by the petitioner that the cheques were given to Harjinder Singh, proprietor of M/s Saab Commission Agency in presence of Sukhdev Singh son of Faqir Singh for the purpose of security,

but strangely enough, said Sukhdev Singh was also not examined. In such circumstances, it can easily be inferred that the petitioner had made only vague allegations against the respondent. More importantly, if Harjinder Singh had misused the cheques of the petitioner then why did not he move application against him for handing over cheques to respondent Manjit Singh. Not moving any such application to the higher authorities of police with respect to misuse of cheques, clearly spells out that there was no real force in the averments made in the complaint. The application Ex.D2 was moved, after the complaint was filed against the petitioner. In such circumstances, the inevitable conclusion that can be drawn is that the story put forward by the petitioner, being an after thought, is inherently improbable. The petitioner must have proved on record beyond reasonable shadow of doubt that there was no debt or liability towards the respondent nor any loan was taken. In the absence of any such evidence, this court has no hesitation in holding that the respondent has established on the record beyond doubt that the cheque Ex.C1 amounting to Rs.6,00,000/- was issued by the petitioner under his signature, which was returned vide memo Ex.C2. The respondent has also proved on record the legal notice Ex.C3, postal receipt Ex.C4, reply to the legal notice Ex.C5 and counter reply Ex.C6. The petitioner, on the other hand, has not been able to rebut the abovesaid documents by any cogent or convincing evidence. The findings recorded by both the learned courts below, in my considered opinion, can not at all be said to be erroneous that may warrant interference by this court.

14 In view of the foregoing reasons, I do not find any illegality or perversity in the well reasoned judgments passed by both the learned courts below. Consequently, revision, being without any merit, fails and is

dismissed.

21.11.2017 (RAMENDRA JAIN)
VK JUDGE

1. Whether speaking/reasoned Yes/No

2. Whether Reportable: Yes/No