

332

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

CRR-756-2013

Date of decision-15.11.2018

Satish

...Petitioner

Vs.

**M/s Mahindra & Mahindra
Financial Services Ltd. and another**

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Avnish Mittal, Advocate for the petitioner.

Mr. Mukesh Bhambu, Advocate for
Mr. Nitin Thatai, Advocate for respondent No.1.

Mr. M.K.Sangwan, DAG, Haryana.

MANOJ BAJAJ, J.

Aggrieved against the judgement dated 11.02.2013 passed by the Appellate Court Gurgaon in Criminal Appeal No.20-MS dated 02.06.2012, whereby judgment of conviction and order of sentence dated 26.05.2012/28.05.2012 passed by trial Court in a complaint case under Section 138 of Negotiable Instruments Act, 1881 (in short 'the Act') was affirmed. The trial Court had imposed simple imprisonment for period of six months and to pay compensation of the cheque amount i.e. ₹3,03,600/- to the complainant.

The brief facts leading to the revision petition are that M/s

Mahindra & Mahindra Financial Service Ltd. brought a criminal complaint under Sections 138 and 142 of the Act and Section 420 of Indian Penal Code on the ground that the finance facility was given to the accused, namely, Satish son of Sant Lal for purchase of a vehicle. Towards discharge of the loan amount, accused Satish issued a cheque bearing No.064162 dated 12.07.2006 for a sum of ₹3,03,600/- drawn on PNB Branch, Jamalpur in favour of the complainant-company. The said cheque was not realised and the Banker HDFC Bank Ltd. returned with remarks “insufficient funds” on 06.09.2006. The complainant issued a legal notice on 04.10.2006 which failed to evoke any response compelling the complainant to institute a complaint for prosecution of the accused.

After pre-summoning evidence, the trial Court summoned the accused only for the offence punishable under Section 138 of the Act vide its order dated 27.10.2006. Thereafter, the complainant examined the material witness i.e. Paras Gupta as CW-1 who had proved the legal notice dated 04.10.2006 (Exhibit P-6), postal receipts (Exhibits P-7 to P-9) and original cheque and bank memo of the petitioner (Exhibit P-5) regarding dishonour of the cheque. After examining the prosecution evidence the trial Court held the accused guilty and imposed a sentence of six months simple imprisonment along with compensation of ₹3,03,600/- (dishonoured cheque amount). The appellate Court maintained the conviction and upheld the sentence.

The convict is in revision to assail these judgments. Learned counsel for the parties have been heard and with their assistance, the case

file has been examined carefully.

Mr. Mittal appearing on behalf of the petitioner has argued that the agreement which was drawn between the parties for finance facility is not on record and has not been proved and challenges the conviction on this ground. This argument is misconceived as the issuance of cheque itself carried presumption that it has been issued towards discharge of liability and it is for the accused to rebut the presumption.

Admittedly, cheque is issued by the convict towards payment of loan. Mr. Mittal further argued that vehicle in question was also taken in possession by the financier and the same was sold and the sale proceeds were not adjusted. In my opinion it has no relevance so far as the penal provisions under the Act are concerned. Learned counsel for the petitioner concedes that his client had not taken any action for retrieving the possession of the vehicle or requesting them to adjust the amount of sale proceeds.

In the grounds of appeal, the accused is stated to have made payment in five instalments which comes to sum of ₹61,000/- which further establishes the transaction between the parties and the presumption of issuance of cheque towards clearance of loan amount by the convict is further strengthened.

The Courts below have recorded the conviction on the basis of correct appreciation of the evidence which is documentary in nature and therefore, this Court does not find any reason to disturb the impugned judgment of conviction. At this stage, learned counsel for the petitioner prayed for reduction of sentence, however, to a query as to whether the

amount of compensation had been paid, the response was in negative. Since trial Court has already taken lenient view in awarding imprisonment for six months, there is no ground to alter the sentence.

The impugned judgments do not suffer from any illegality or error of law warranting interference in the criminal revisional jurisdiction.

Resultantly, present revision petition is dismissed.

(MANOJ BAJAJ)
JUDGE

15.11.2018
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No