

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

CRR-2413-2014(O&M)

Date of decision:-1.5.2018

Sardar Nath

...Petitioner

Versus

S.M.S. Choudhary

...Respondent

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

Present: Ms.Urvashi Dhugga, Advocate
for the petitioner.

Mr.H.S. Bhullar, Advocate
for the respondent.

Mr.Ramandeep Sandhu, Sr.DAG, Punjab.

H.S. MADAAN, J.

Complainant S.M.S. Choudhary Swaraj Mitter Saini Choudhary) had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as *the Act*) against Sardar Nath on the allegations that to discharge his legal debt/liability, accused had issued cheque bearing No.529011 dated 10.7.2006 in the sum of Rs.1 lakh drawn on State Bank of India, Badarpur, New Delhi in favour of complainant giving an assurance that same would be encashed; that the complainant had presented the cheque through his banker, which was sent

to the banker of accused for collection but the cheque was returned uncashed by the banker of accused along with the memo dated 20.7.2006 having endorsement "Funds Insufficient"; that the complainant served a statutory notice dated 3.8.2006 upon the accused calling upon him 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 Sub-Divisional Judicial Magistrate, Pathankot.

After recording preliminary evidence, the accused was summoned. He had appeared and admitted bail. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

During the course of his evidence, the complainant led evidence both oral as well as documentary.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him in the evidence of the complainant were put to him. The accused had pleaded false implication.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Magistrate convicted the accused for an offence under Section 138 of the Act vide judgment dated 8.2.2011 and vide order of that very date, he was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- and in default thereof, to undergo further rigorous imprisonment for a period of three months. Fine is said to have been paid.

The accused challenged judgment of his conviction and

sentence order by way of filing appeal in the Court of Sessions, which was, however, dismissed by learned Additional Sessions Judge, Pathankot vide judgment dated 18.7.2014.

Feeling dissatisfied, the petitioner has filed the present revision petition, notice of which was issued to the respondent - complainant, who put in appearance through counsel.

In the meantime, the respondent/complainant S.M.S. Choudhary had expired and on an application having been filed, his legal heirs have been brought on record.

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

During the pendency of revision proceedings, it has been agreed between the parties that amount of Rs.1 lakh with receipt upto date be ordered to be paid to LRs of the complainant and in that way the claim of LRs would be satisfied and for that there would have no objection if the sentence is reduced.

Accordingly, it is directed that amount with interest so deposited be released to LRs of the complainant. The criminal revision petition is disposed of maintaining the conviction of the accused for the offence under Section 138 of the Act. However, as far sentence part is concerned, the same is modified and the petitioner is sentenced to imprisonment already undergone by him in this case, which is from 18.7.2014 to 11.8.2014.

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

fine is stated to have already been paid.

Necessary information be sent to the quarter concerned.

1.5.2018.

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No