

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

Criminal Revision No.3955 of 2016.
Decided on:- November 30, 2018.

Jarnail Singh.

.....Petitioner.

Versus

Punjab State and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Mohit Garg, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, D.A.G., Punjab.

Mr. Rakesh Khatana, Advocate
for respondent No.2-complainant.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 16.09.2016 passed by learned Sessions Judge, Shaheed Bhagat Singh Nagar, whereby his appeal against the judgment of conviction and order of sentence dated 02.01.2015 passed by learned Sub-Divisional Judicial Magistrate, Balachaur, was dismissed.

Briefly stated, respondent No.2-complainant Prem Chand (hereinafter mentioned as the complainant) had filed a complaint against petitioner-accused Jarnail Singh under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) with the averments that the accused owed a sum of Rs.4 lakh to him and in order to discharge his legal liability,

issued a cheque bearing No.107709 dated 23.05.2011 for a sum of Rs.4 lakh drawn on Punjab Gramin Bank, Branch Kahanpur Khuhi, Ropar with an assurance that the same would be honoured on presentation. However, when presented, the said cheque was dishonoured by the bank with the remarks "*Funds Insufficient*". The complainant issued a legal notice to the accused, but despite that, he failed to make the payment of cheque in question. Hence the complaint.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 02.01.2015 convicted the petitioner for the commission of offence punishable under Section 138 of the Act and vide separate order of even date, sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.10,000/-. In default of payment of fine, the convict was further ordered to undergo simple imprisonment for one month.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 16.09.2016 passed by learned Sessions Judge, Shaheed Bhagat Singh Nagar, appeal of the petitioner was dismissed.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

Learned counsel for the petitioner has argued that bare perusal of the complaint nowhere suggests the date on which the amount of Rs.4 lakh was advanced to the petitioner. The petitioner has never borrowed the amount of Rs.4 lakh from the complainant and a false complaint was filed against him

on the basis of a security cheque which was issued by the petitioner to Friends Finance Company, but later on, mis-utilised by the complainant.

He has further contended that since the complainant died during the pendency of the complaint, his son Balram pursued the complaint and while appearing in the witness box as CW1 he has emphatically stated that the loan was disbursed in his presence to the petitioner on 23.07.2011. However, the cheque in question bears the date as 23.05.2011. Therefore, the complaint was liable to be dismissed as no one would give a cheque in advance before two months from the date of obtaining the loan.

On the other hand, learned State counsel and learned counsel for respondent No.2-complainant have argued that the petitioner-accused had issued the cheque in question in discharge of his legally enforceable liability and as such, there is no scope of interference with the impugned judgments passed by the Courts below. Moreover, the scope of revisionary jurisdiction is very limited.

I have heard learned counsel for the parties.

Perusal of the record reveals that in the present case, the petitioner-accused had adopted a practice to delay the proceedings, which an accused usually adopts during the trial. After furnishing his affidavit before the trial Court in his examination-in-chief, complainant Prem Chand had repeatedly appeared before the trial Court, but his cross-examination was delayed by the petitioner on the one pretext or the other. Complainant Prem Chand appeared in the witness box as PW1 in support of his complaint by way of his affidavit dated 07.05.2012, but his cross-examination was deferred for a period of more than two months. Thereafter, on 28.08.2012, the

complainant again appeared for his cross-examination, but still he was not cross-examined by the accused. In the meantime, the complainant had expired and thereafter, his son Balram pursued the present complaint.

So far as the plea of learned counsel for the petitioner-accused that the complaint was liable to be dismissed on the ground that the cheque was issued on 23.05.2011, whereas Balram (CW1) in his cross-examination has deposed that the accused had obtained loan of Rs.4 lakh from his father i.e. complainant Prem Chand on 23.07.2011 is concerned, this Court finds that the petitioner cannot derive any benefit from this mistake as it is only a typographical error. Had the amount of Rs.4 lakh actually been borrowed by the petitioner-accused on 23.07.2011, he must have taken a stand in this regard before the trial Court in his statement under Section 313 Cr.P.C. and even thereafter, while filing the appeal before learned appellate Court. However, there is nothing on record to substantiate this plea, which has been raised for the first time before this Court.

Further more, the petitioner-accused while appearing in the witness box as DW1 has specifically admitted in his cross-examination that the cheque Ex.C1 bears his signatures. The bank memos dated 27.07.2011 Ex.C2 and dated 23.07.2011 Ex.C3 have not been questioned by the petitioner. The cheque Ex.C1 could not be encashed because of insufficient funds in the account of the petitioner.

The plea taken by the petitioner that the cheque in question was given blank to Friends Finance Company and the same was later on misused by the complainant, is of no help to him as his own witness i.e. Satnam Singh (DW3), partner of Friends Finance Company has categorically deposed in his

examination-in-chief that the petitioner-accused never issued any blank cheque as surety to the said finance company.

Moreover, the scope of revisional jurisdiction is vested with limited powers. The petitioner-accused has not been able to prove that in what manner, the impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Further, the custody certificate so placed on record reveals that the petitioner was released in this case on 01.08.2017 after completion of his actual sentence of one year and he has already deposited the amount of fine in Court.

Accordingly, the impugned judgment of conviction and order of sentence dated 02.01.2015 passed by learned trial Court as well as the impugned judgment dated 16.09.2016 passed by learned appellate Court are affirmed and the present revision petition, being devoid of any merit, is dismissed.

November 30, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No