

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

CRR-1415-2017(O&M)

Date of decision:-22.1.2018

Hargobind Singh

...Petitioner

Versus

Sushil Kumar

...Respondent

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

Present: Mr.I.S. Mann, Advocate
for the petitioner.

Mr.Karan Garg, Advocate
for the respondent.

H.S. MADAAN, J.

Complainant Sushil Kumar had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as *the Act*) against accused Hargobind Singh on the allegations that accused had raised a loan of Rs.3,50,000/- from the complainant and to discharge that financial liability, such accused had issued cheque No.000001 dated 13.3.2013 drawn on Yes Bank, Branch Sri Muktsar Sahib, giving an assurance that on presentation, the same would be encashed, but the things went otherwise and when cheque was presented by the complainant, it was received back uncashed due to insufficiency of

funds in account of the accused; that the complainant was informed accordingly and he served statutory notice 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 the complaint in question in the Court of Chief Judicial Magistrate, Sri Muktsar Sahib.

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

The complainant led oral as well as documentary evidence.

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 but he denied the same and pleaded innocence contending that he never gave the cheque in question to complainant; that the cheque does not bear his signatures and body writing is also not in his hand; that complainant has forged his signatures; that the complainant has no capacity to give such huge amount to accused since he has a small shop of clocks and watches.

Thereafter, accused led evidence in defence and examined Bhupinder Singh as DW1.

After hearing arguments, learned trial Magistrate vide judgment and order dated 4.7.2016 convicted the accused for offence under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default thereof, to undergo further rigorous imprisonment for a

period of two months.

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, Sri Muktsar Sahib vide judgment dated 16.3.2017, which left him aggrieved and he has filed the present revision petition.

Notice of the revision petition was issued to the respondent, who put in appearance through counsel.

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

At the very outset, it may be mentioned here that learned counsel for the revision petitioner states that he does not challenge the impugned judgments passed as regards the conviction part and would confine his arguments only qua quantum of sentence. He has contended that the petitioner is aged about 35 years; that he is married having one child; that his wife has deserted him and his mother has died whereas father is handicapped, as such, there is no able bodied member available in the family to look after the child. Therefore, the sentence of imprisonment imposed upon the petitioner – convict be reduced.

Whereas, this request is being opposed by learned counsel for the respondent vehemently stating that the petitioner has not returned even a single penny out of the cheque amount and deserves to be given deterrent punishment.

After hearing rival contentions of learned counsel for the parties, I find that keeping in the view the facts and circumstances

explained by learned counsel for the revision petitioner, the imprisonment of two years imposed appear to be somewhat on higher side. Therefore, while upholding the impugned judgments as far as conviction part is concerned, those are modified with respect to the sentence part and rigorous imprisonment of two years is reduced to rigorous imprisonment for one year, whereas keeping the amount of fine imposed as untouched.

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

Necessary intimation be sent to the quarter concerned.

22.1.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No