

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

CRR-179-2017(O&M)

Date of decision:-22.3.2018

Harbans Lal

...Petitioner

Versus

Raghunath

...Respondent

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

Present: Mr.H.S. Bawa, Advocate
for the petitioner.

Mr.Malkeet Singh, Advocate
for the respondent.

H.S. MADAAN, J.

Complainant Raghunath had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as *the Act*) against Harbans Lal on the allegations that to discharge his legal debt/liability, accused Harbans Lal had issued cheque bearing No.356951 dated 27.9.2005 in the sum of Rs.3 lakhs drawn on State Bank of India, Dhab Basti Ram Branch, Amritsar in favour of complainant giving an assurance that same would be encashed; that the complainant had presented the cheque through his banker Union Bank of India, Daim Ganj Branch, Amritsar but the cheque was returned uncashed by the banker of

accused along with the memo dated 1.10.2005 having endorsement “Insufficient funds”; that the complainant approached the accused informing him regarding dishonouring of cheque but to no effect; that the complainant served statutory notice dated 17.10.2005 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 Judicial Magistrate Ist Class, Amritsar.

After recording preliminary evidence, the accused was summoned. He had not appeared in the Court despite issuance of warrants, both bailable and non-bailable and publication of proclamation against him. Therefore, he was declared a proclaimed offender on 29.9.2017. Later on, he had put in appearance and was granted 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 took up a plea that he had a dispute with Dr.Harjeet Singh and an amount of Rs.1,40,000/- was settled to be paid vide compromise Ex.R1; that the present complainant Raghunath was also a signatory to that compromise; that the complainant is a close friend of Dr.Harjeet Singh and a blank cheque was given to Dr.Harjeet Singh by him, who had given the same to the complainant and on the basis of which the present false complaint had

been filed; that he has never taken any amount from the complainant to discharge the outstanding debt and liability; that the present cheque was not filled in by him and the same had been tampered by Dr.Harjeet Singh and the present complainant; that he had not received any legal notice; that the complainant and Dr.Harjeet Singh are doing the business of lending money without obtaining any licence from the competent authority.

During the defence evidence, the accused examined Smt.Sukhpreet Kaur, Handwriting and Fingerprint Expert as DW1 and Jarnail Singh as DW2.

The trial Court had formulated following point for determination:

'Whether the accused had issued the cheque in question in discharge of his legal/debt/liability and the accused has failed to make the payment to the complainant within the period of 15 days from the receipt of notice. As such, the accused has committed offence under Section 138 of the Negotiable Instruments Act?

After hearing arguments, learned trial Magistrate came to the conclusion that the cheque in question was issued by the accused in favour of the complainant in due discharge of his liability but the accused failed to make the payment of the said cheque in spite of the notice issued to him in this regard, therefore, he has committed an offence under Section 138 of the Act. The accused was convicted for an offence under Section 138 of the Act vide judgment dated 8.10.2012 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.1,000/- and in default thereof, to undergo further simple imprisonment for a period of two 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 (Ad hoc), Fast Track Court, Amritsar vide judgment dated 12.5.2014 on merits further observing that accused/appellant was on bail in this case and he had not come present; that earlier he moved applications for exemption of personal appearance for more than 10 times, which were allowed; that further application filed by the appellant for exemption of his personal appearance for 16.4.2016 was dismissed and thereafter the appellant did not move any application for exemption of his personal appearance for 24.4.2014. Copy of the judgment be sent to the Court of learned Chief Judicial Magistrate, Amritsar with the direction to execute the sentence awarded him.

Feeling dissatisfied, the petitioner has filed the present revision petition belatedly by 878 days. An application under Section 5 of the Limitation Act for condoning the delay has been filed contending that the delay took place on account of poor health of petitioner inasmuch as he is 70 years old and he was not aware of dismissal of the appeal; that the petitioner was released on 21 days parole on 27.10.2016 for treatment of his ailing wife, thereafter he has filed this revision petition.

Notice of the application was issued to the respondent, who

put in appearance through counsel.

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

I find the reasoning given in the application under Section 5 of the Limitation Act to be highly unsatisfactory and no ground is made out to condone the gross delay of more than 2 years to file revision petition.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

The petitioner has failed to cross the hurdle of limitation and the present petition is liable to be dismissed on that score alone.

The petitioner has filed the present petition without surrendering before the trial Court despite a specific direction having been issued by this Court. The revision petition deserves to be dismissed for that very reason. However, on merits also, the petitioner does not have any case.

The judgment of conviction and order of sentence passed by the learned trial Magistrate are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Similarly the judgment passed by learned Additional Sessions Judge, Amritsar contains discussion of facts, evidence adduced by the parties and legal position and reasons for affirming the judgment passed by the trial magistrate and dismissing the

appeal are given. I do not find any illegality and infirmity with the impugned judgments. Even otherwise, law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no interference with such judgment is to be done.

The conduct of the petitioner during the proceedings firstly showing utmost reluctance in appearing before the trial Court to the extent that he was declared a proclaimed person and only then he had appeared in the Court and thereafter during the pendency of an appeal had not been appearing there seeking frequent exemption from personal appearance and ultimately absenting therefrom and then while being absconder approaching this Court without surrendering in the trial Court and furthermore not complying with the directions issued by this Court to surrender in the trial Court.

Therefore, the revision is doomed to be dismissed due to such conduct of the petitioner on merits also.

Finding no merits in the revision petition, the same stands dismissed.

22.3.2018.
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No