

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

CRR-1860-2017(O&M)
Date of decision:-20.4.2018

Surinder Kumar

...Petitioner

Versus

Aarti Puri

...Respondent

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

Present: Mr.S.S. Narula, Advocate
for the petitioner.

Mr.Gurinder Pal Singh, Advocate
for the respondent/complainant.

H.S. MADAAN, J.

Complainant Aarti Puri had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as '*the Act*') against Surinder Kumar, his wife Seema Aneja, son Aman Aneja and Lekh Raj Aneja on the allegations that accused were acquainted with the complainant and they had been doing business of footwear and since son of complainant was not performing well in his business of shuttering,

the accused suggested to complainant that he should also start business of footwear; at the asking of the accused, the complainant paid a sum of Rs.50 lakhs to them in cash, however, accused did not take the necessary action in the matter and kept putting it off; when the complainant asked them either to execute the MOU or to return the money, then they issued a cheque in favour of the complainant in the sum of Rs.50 lakhs giving an assurance that it would be encashed; the complainant presented the cheque with her banker Punjab National Bank, which sent it for clearance to the banker of the accused but it was returned uncashed due to insufficiency of funds in account of the accused and complainant was informed accordingly vide memo dated 6.4.2011; thereafter the complainant served a legal notice dated 20.4.2011 upon the accused calling upon them to make the payment of the cheque amount within 15 days of receipt of notice but to no effect, as such, she filed a complaint in question in the Court of Judicial Magistrate Ist Class, Ludhiana.

After recording preliminary evidence, the accused were summoned. They had put in appearance and were granted bail. Notice of accusation under Section 138 of the Act was served upon them, to which, they pleaded not guilty and claimed trial.

During the course of her evidence, the complainant got her own statement recorded as CW1 besides examining Anand Khosla as CW2 and HC Palwinder Singh as CW3.

With that the complainant evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against

such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

In defence evidence, the accused examined Sunil Monga as DW1, who supported their defence version.

After hearing arguments, learned trial Magistrate convicted accused Surinder Kumar only, for an offence under Section 138 of the Act vide judgment dated 26.10.2016, whereas remaining accused Seema Aneja, Aman Aneja and Lekh Raj Aneja were acquitted. Vide order of that very date, accused Surinder Kumar was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.3,000/- and in default thereof, to undergo further rigorous imprisonment for a period of fifteen days.

Being aggrieved, accused Surinder Kumar had 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, Ludhiana vide judgment dated 11.5.2017 and he was taken into custody to undergo the sentence.

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

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

Learned counsel for the revision petitioner has contended that in the complaint or in the evidence no date, time, year or day when an amount of Rs.50 lakhs was collected by the complainant from her

relatives or when she had given it to four accused has been mentioned and no documentary proof is there to evidence the payment of money by the complainant to the accused, so much so her financial capacity to arrange that amount is also not established. The trial Court by mis-appraisal of evidence and wrong interpretation of law has come to the conclusion that necessary ingredients of offence under Section 138 of the Act are fulfilled thereby convicting the revisionist accused for the said offence.

On the other hand, learned counsel for the respondent/complainant has contended that the revisional jurisdiction of this Court is quite limited and it is not to act as an Appellate Court going through the evidence and looking into merits of the case and further all such pleas were available to the revisionist/accused before the trial Magistrate and Additional Sessions Judge and he has in fact raised all such contentions there and before this Court also, which cannot be done. Learned counsel for the respondent/complainant has referred to authority *Nagsi Khemu Harijan Versus State of Gujarat, 2015(2) R.C.R.(Criminal)372* by Gujarat High Court, wherein it was observed that the revisional jurisdiction under Section 397 of the Code is a limited jurisdiction exercisable if the Court below has committed a manifest illegality or the findings are perverse and based on misreading of evidence resulting into miscarriage of justice. The principles for exercise of revisional jurisdiction under Section 397 Cr.P.C. were highlighted in *D.Stnbens V. Nosihbolla (1951 SCR 284)* as also in *K.C. Reddy V. State of Andhra Pradesh (1963 SCR 412)*. In *State of Maharashtra V.Jag Mohan Sing Kuldip Sing Anand and others [(2004) 7 SCC 659]*, the

Apex Court reiterated that the revisional power of the High Court under Sections 397 and 401 Cr.P.C. cannot be exercised as a second appellate power and that the High Court cannot, while exercising the revisional power, undertake in-depth and minute re-examination of entire evidence and upset concurrent findings of the trial Court and first appellate Court. He has further referred to authority **Kanwar Lal and another Versus State of Haryana 2016(2) R.C.R.(Criminal) 645** by a Co-ordinate bench of this Court wherein it was observed as under:

*The scope of revisional jurisdiction is vested with limited powers. Hon'ble Apex Court in **Johar and others V. M/s Mangal Prasad and another, 2008(3) SCC 423** while dealing with the scope of revisional jurisdiction, has observed as under;*

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.

I find merits in the arguments of learned counsel for the respondent/complainant. There is concurrent finding recorded by the learned trial Magistrate as well as learned Additional Sessions Judge, Ludhiana that offence under Section 138 of the Act was committed by the

accused and I do not find anything wrong with such conclusion drawn by the Courts below. The findings so arrived are certainly not perverse or against settled principles of criminal law. A perusal of the cross-examination of complainant appearing as CW1 goes to show that suggestions have been given to her that the cheque had been given as security for payment of the committee. This very plea has been taken by the accused in his statement under Section 313 Cr.P.C. In that way, issuance of cheque is not disputed. Once the accused had come up with a specific plea that it was as a security on account of some committee, it was for them to establish this fact but the same was not done. Under Section 139 of the Act, there is presumption in favour of the holder that he received the cheque for the discharge in whole or in part of any debt or other liability. Though such presumption is rebuttable but I do not find that accused have been able to rebut the said presumption. It is not established on the record that cheque is a forged or fabricated document. It is not the case of the accused that the cheque was stolen and signatures of accused Surinder Kumar were forged on the cheque. No evidence in that regard has been adduced. It being so and if looked into and viewed in conjunction with the facts/suggestions which have been given to the complainant that cheque has been issued as a security; the issuance of cheque stands admitted and in terms of Section 139 of the Act, the presumption is in favour of the complainant whole that it was on account of discharge of financial liability. The complainant had successfully proved that the cheque when presented was returned uncashed due to insufficiency of funds in the account of the accused and accused failed to

make the payment within 15 days of receipt of notice got served by the complainant upon him. Now in the revision, the accused cannot be allowed to find fault with the whole transaction.

The other contentions of learned counsel for the revisionist that cheque issued by the petitioner for liability of others does not attract Section 138 of the Act and cash payment beyond Rs.20,000/- cannot be believed and considered; there is no evidence of service of notice, do not help the revisionist in advancing his case much. The complainant has placed on file copy of legal notice dated 20.4.2011 Ex.C3 along with postal receipts Ex.C4 to Ex.C7 and the presumption under Section 114 of the Indian Evidence Act is that the notice was duly served upon the addressee. There is nothing on record to show that the address of the revisionist given in the notice is wrong or that the notice had been sent back undelivered. The accused could have summoned record from the Post Office to show that notice had in fact not been delivered to him but it was not so done. Therefore, presumption under Section 114 of the Indian Evidence Act of receipt of notice is to be drawn in favour of the complainant.

As regards payment of Rs.20,000/- being not permissible to be made in cash, learned counsel for the complainant has referred to citation **Mr.Krishna P. Morajkar Versus Mr.Joe Ferrao and another, 2013(4) Cri.C.C. 795** by Bombay High Court, wherein it was observed that a person can advance loan more than Rs.20,000/- in cash and the restriction on cash advances was in fact on the taker and not the person who makes the advance. It was further observed that the penalty for

taking such advance or deposit in contravention of provisions of Section 269SS of Income-Tax Act was to be suffered by one who takes the advance and the person taking loan cannot invoke said provision from preventing a person from recovering the advance and accused cannot refuse to make payment. He has further referred to authority **Rangappa Versus Mohan, 2010 Cri.L. J. 2871** by the Apex Court, which was a case when the accused had issued a post dated cheque in lieu of services rendered by the complainant but the cheque was dishonoured on account of stoppage of payment by the accused. The complainant had served statutory notice upon the accused but accused neither made payment within prescribed period nor filed reply to the notice and a complaint under Section 138 of the Act was filed. The plea of the accused that cheque in question was a blank cheque bearing his signatures, which has been lost and the complainant had misused it was not found to be tenable for the various reasons inasmuch that accused had admitted that the signatures on the cheque were his own leading to drawing presumption under Section 139 of the Act that cheque pertained to a legally enforceable debt; that no probable defence had been raised by the accused besides defence of loss of blank cheque was taken up belatedly. It was further observed that failure on the part of accused to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit the complainants version.

As regards the citations pressed into service by learned counsel for the revisionists i.e. **Tarsem Singh and others Versus State (Chandigarh Administration), Chandigarh, 2008(2) R.C.R.(Criminal)**

813, *Ram Phal Versus The State of Haryana, 2010(6) R.C.R.(Criminal)*
827, *Chavan Motiram Bankaram Versus Bisbambhar Amir Balmik and*
another, 1977 Cr.L. R. 183 and *Ahmed Noor Khan and others Versus*
State of Assam, 1972 AIR (Gauhati) 7, those are not applicable since no
illegal appreciation of evidence on the part of Courts below has been
found to be there.

As regards the non-consideration of the statement of DW1
Sunil Monga to the effect that cheque Ex.C1 was blank signed by
Surinder Kumar given to complainant as security, which she had filled up
and then presented it getting it dishonoured, the trial Court in para No.12
has discussed such contention not agreeing with the same. Therefore, it
cannot be said that those contentions were simply ignored by the trial
Court. Learned Additional Sessions Judge, Ludhiana in para Nos.26 to 28
of the judgment has discussed this testimony of DW1 Sunil Monga, who
is a brother of accused No.2 – Seema Aneja, as such, it cannot be said that
defence evidence was not considered amounting to non appreciation of
evidence causing prejudice to the accused resulting in failure of justice.
The authority *Ram Phal Versus The State of Haryana* (supra) had
altogether different facts relating to an accident case. In this very
judgment, it was observed that while exercising revisional jurisdiction
Court cannot reevaluate and reappreciate the evidence, produced by the
prosecution, until and unless it comes to the conclusion that the findings
of guilt recorded by the Courts below are perverse, illegal or erroneous on
account of the misreading of the evidence. Nothing of that type comes out
to be there in the instant case. Similarly, the other judgments *Chavan*

Motiram Bankaram Versus Bisbambhar Amir Balmik and another and ***Ahmed Noor Khan and others Versus State of Assam*** (supra) do not help the case of revisionist in any manner.

As regards the authority referred to by learned counsel for the revisionist i.e. ***Vijay Versus Laxman and another, 2013(1) R.C.R.(Civil) 980***, which was a case where according to complainant cheque was issued by the accused towards repayment of loan but no documentary or other material was brought on record to prove loan transaction and date of demand of loan and giving of loan was not stated in the complaint which was found to be fatal, though the accused had admitted his signatures and issuance of cheque but was able to prove that cheque was issued by way of security. That authority had different facts since accused in that case was a milk vendor, who supplied milk to father of the complainant running a dairy farm. The accused had claimed that according to prevailing practice the complainant had received security cheques from all the milk suppliers and used to pay the amount for one year and the accused furnished security by way of cheque for a sum of Rs.1,50,000/- and when the annual accounts between the accused and dairy owner father of the complainant were settled, the accused demanded the return of the cheque to him, which was avoided, thereafter an altercation had taken place between the two leading to registration of the FIR against father of the complainant. Thereafter, notice was served upon the accused and complaint had been filed. It was under such circumstances, the observations had been made whereas, it is not so with regard to the present case.

Regarding another authority pressed into service by learned counsel for the revisionist i.e. **Krishna Janardhan Bhat Versus Dattatraya G. Hegde, 2008(1) R.C.R.(Criminal) 695** by the Apex Court wherein it was observed that when the complainant could not prove that he had much money to advance, the accused was acquitted but in the instant case, the complainant in her cross-examination has given details of the sources from where she had managed to raise the amount of Rs.50 lakhs advanced by her to the accused. Thus, this authority is also not applicable. Remaining authorities referred to by learned counsel for the revisionist do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

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, Ludhiana 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.

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

20.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**