

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

CRR No. 3425 of 2017

DATE OF DECISION :- January 19, 2018

Manpreet Singh

...Petitioner

Versus

Gurcharan Singh and another

...Respondents

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

Present:- Mrs. Gurnam Kaur Turka, Advocate for the petitioner.

Complainant Gurcharan Singh has filed a complaint under Section 138 of the Negotiable Instruments Act against accused Manpreet Singh on the allegations that the accused had borrowed a sum of ₹2,50,000/- from the complainant and to discharge his said liability he had issued cheque no. 063841 dated 29.5.2013 in the sum of Rs.2.50 lacs drawn on Bank of Punjab, Rajpura. That Bank of Punjab has since merged with HDFC Bank; that the complainant had presented the cheque with his banker for encashment but the same was dishonoured vide memo dated 5.6.2013 with the endorsement 'Account Closed'. The complainant had issued legal notice dated 26.6.2013 to the accused calling upon him to make payment of cheque amount within stipulated period of 15 days from the date of receipt of notice but to no effect. Hence the complaint was filed in the Court of Judicial Magistrate Ist Class, Rajpura.

After recording of preliminary evidence accused was

summoned. He put in appearance and was admitted to bail and notice of accusation for offence under Section 138 of the Negotiable Instruments Act was served upon him to which he pleaded not guilty and claimed trial.

During the course of evidence by the complainant, complainant Gurcharan Singh appeared as CW1 and tendered his affidavit CW1/A making contentions therein inconsonance in this case and gave in complaint. He perused the original cheque as Ex.C1, memo dated 5.6.2013 Ex.C2, legal notice dated 26.10.2013 Ex.C3, postal receipt Ex.C4. The 2nd witness examined by the complainant happen to be Mr. Gurbhej Singh CW2, who brought the record regarding account no. 1402312 of Bank of Punjab in the name of accused Manpreet Singh deposing that account numbers has since changed and has been closed; that it was a joint account in the name of Manpreet Singh and Gurmeet Singh. He produced copy of record as CW2/A stating that memo has been issued by their bank. With that evidence complaint was closed.

Statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused put to him but he denied allegations pleading false implication. He came up with a plea that he was owner of tractor and complainant has spare part shop; that he had purchased spare parts of tractor from the complainant in the year 2005 issuing a blank cheque as security for Rs.20,000/-. However, he had paid the amount to the complainant after six months but the complainant did not return the cheque and misused the same. The accused did not lead any evidence in defence.

After hearing the arguments, the trial Court convicted the

accused for offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for 1½ years and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for 10 days. In this judgment the trial Magistrate had observed that accused had not examined any witness to prove its defence version and such version was not rather put to the complainant during his cross examination. The accused has failed to prove that he owned any tractor and complainant was running spare part shop for that he had purchased any spare part from the complainant. As a matter of fact, no receipt regarding purchase of spare part from the shop of the complainant had been produced evidence. In para no. 10 and 11 of the judgment it has been observed as follows :-

“10. From the oral and documentary evidence produced on record, this Court reached to the conclusion that from the testimony of CW-2 Gurbhaj Singh, it is clear that account of accused had already been closed on 25.3.2011 and cheque had been issued on 29.5.2013. CW-1 has clearly deposed that amount has been filed by accused himself and signature on the cheque has not been denied or disputed by the accused, rather it is the defence of accused that cheque was retained by the complainant due to close relation with complainant. The very onus to prove the plea raised by accused shifts upon the accused to prove his defence, but accused has failed to do so or to prove that it was a security cheque.

11. Further, as per provision of Section 138 of Negotiable Instruments Act, presumption of Section 139 of Negotiable Instruments Act is liable to be raised against the accused and the accused has failed to rebut the same by leading any cogent and convincing evidence. Whereas the complainant has duly

proved his complaint.”

The accused had challenged the said judgment of his conviction and sentence by way of filing an appeal but was unsuccessful there.

Learned Additional Sessions Judge, who vide judgment dated 13.7.2017 had dismissed the appeal has observed as follows :-

“11. Now coming to the plea of appellant-accused that he is innocent and the cheque in question issued by him is a security cheque. But, I am not convinced with the submission made by Ld. Counsel for the appellant-accused. There is no sufficient evidence led by the appellant to prove these facts on the cord. It is the accused, who adopted this plea and it was highly incumbent upon him to prove these facts, however, in the present case from the above discussion of the evidence, it can be said that accused failed to substantiate his defence. Furthermore, when the legal notice dated 26.6.2013 was served upon the appellant-accused, then he should have replied the same, but, he omitted to do so, so an adverse inference due to that omission is liable to be drawn against the appellant. The other ingredients to attract the provisions of Section 138 of Negotiable Instruments Act are also duly complied with. As discussed earlier that the accused failed to substantiate his defence and failed to rebut the presumption which arises in favour of the complainant under Section 139 of the Negotiable Instruments Act. The complainant has proved all the documents. So the learned trial Court has rightly held that the complainant has been able to prove his case against the accused and the learned trial Court has rightly convicted and sentenced the appellant vide impugned judgment. There is no illegality in the impugned judgment and no interference is warranted in it.

12. So there is nothing on record to disbelieve or discredit the evidence led by the respondent-complainant. The cheque in

question bears the signatures of the appellant-accused and same has not been canceled by the bank. So, the entire evidence on record transpires that cheque in question in fact was issued by appellant-accused in favour of the complainant to discharge legally enforceable liability. More so, the appellant-accused denied all the incriminating circumstances appearing against him and pleaded only false plea. I have also guided myself with the ratio of judgments cited by the Ld. Counsel for the appellant and the proposition of law in these citations are not disputed, but, the same are not applicable to the case in hand and as such distinguishable.”

Now by way of filing the present petition, the accused-convict is challenging the judgments passed by the Court below.

I have gone through such judgments and I do not find any legality or infirmity therein much less apparent on the face of such judgments. The judgments are result of proper appraisal of evidence and correct interpretation of law. There is no ground to upset those judgments while exercising a revisional jurisdiction either as regards conviction or sentence part. Therefore, finding no merit in the petition, the same stands dismissed.

(H.S. MADAAN)
JUDGE

January 19, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No