

Sr. No.236

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

**CRR-1383-2018(O&M)
Date of decision:19.11.2018**

Brijesh Parashar and othersPetitioners

versus

Anjana BansalRespondent

CRR-1389-2018(O&M)

Brijesh Parashar and othersPetitioners

versus

Anjana BansalRespondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Shiva Khurmi, Advocate for
Mr. Sarfraj Hussain, Advocate
for the respondent.

Rajbir Sehrawat, J(Oral)

This Order shall dispose of two revision petitions i.e. CRR No.1383 of 2018 and CRR No.1389 of 2018. For convenience, the common facts, wherever mentioned; are being taken from CRR No.1383-2018.

Present petition has arisen from the judgment dated 24.01.2018 passed by Additional Sessions Judge, Faridabad, whereby the judgment of conviction dated 09.02.2016 and the order of sentence dated 16.02.2016; passed by Judicial Magistrate Ist Class, Faridabad was upheld; upholding thereby the conviction of the petitioner under Section 138 of the Negotiable Instruments Act and the sentence of rigorous imprisonment for 6 months.

The amount of cheques involved in the present cases were

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Rs.3,20,000/- and Rs.2,50,000/-. As per the allegations, the complainant was allured to invest with the petitioner for plots of land. However, the accused/petitioner could not keep his promise. Therefore, to return the money to complainant; the cheques in questions were issued to the Complainant. On being presented to the bank; the cheques were dishonoured. That is how; the separate complaints were filed before the Trial Court. However, the evidence led in both the complaints was common. Finding evidence of the prosecution to be believable; the petitioner was convicted and sentenced as mentioned above, in both the complaints.

The petitioner preferred separate appeals before the Court of Additional Sessions Judge, Faridabad. However, the Court of Additional Sessions Judge, Faridabad also upheld the Order passed by the Trial Court confirming the conviction and the sentence of the petitioner. Hence two separate revision petitions have been filed.

Learned counsel for the petitioner contends that the petitioner had paid some of the amount to the Complainant. However, the Courts below have not taken into consideration that amount; while considering the case of the petitioner. No other substantial argument was raised.

On the other hand, learned counsel for the Complainant submits that the petitioner had not even disputed his signatures on the cheques. Rather by making the part payment; the petitioner admitted his liability. It is further contended that so far as the payments, claimed by the petitioner are concerned, the same were made after the complaints were filed, and even that not as per the amounts mentioned in the cheques. Therefore, the subsequent part payment of the amount of the cheque is not sufficient to

exonerate the petitioner of his liability under Section 138 of Negotiable Instruments Act.

Having considered the rival contentions of the parties, this Court finds that the Courts below have not committed any illegality or irregularity while passing the order impugned before this Court. When the signatures on the cheques are not disputed by the petitioner then part payment of the amount of the cheque, as is claimed to have been made by the petitioner, is not sufficient to exonerate him of the charge under Section 138 of the Negotiable Instruments Act.

Another aspect which deserve to the mentioned here is that while issuing notice of motion on 20.04.2018; it was ordered by this Court that *execution or any coercive process issued against the petitioners shall remain stayed*. However, subsequently it was found that even after the appeals against conviction of the petitioner stood dismissed, the petitioner had not even surrendered before the court/authorities. Therefore, vide Order dated 08.08.2018, the interim protection in favour of the petitioner was vacated.

Still further it is noted that in CRR No.1389 of 2018; the petitioner had undertaken to pay an amount of Rs.1 lakh in the shape of bank draft to the complainant; to obtain the above mentioned interim order. However even that amount has not been paid by the petitioner.

In view of the above, this Court finds no merit in the present petitions. The same are dismissed.

19th November, 2018

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No

[RAJBIR SEHRAWAT]

JUDGE