

CRR-1224-2017

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

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Date of Decision:07.11.2019

Hardeep Singh

... Petitioner

Versus

Consolidate Farmers and Co. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. M.S.Yadav, Advocate for
Mr. Sherry K. Singla, Advocate,
for the petitioner.

Mr. Abhishek Goyal, Advocate,
for respondent No.2.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the judgment dated 06.03.2017 passed by the learned Additional Sessions Judge-I, Sangrur, whereby appeal filed by respondent No.2-accused against the judgment of conviction and order of sentence dated 01.04.2014 passed by the learned Judicial Magistrate Ist Class, Melerkotla, has been allowed and the matter has been remanded back to the learned trial Court to pass the verdict afresh

In brief, the facts of the case as alleged in the complaint are that Baldev Singh (accused No.2) and respondent No.2-Darshan Singh (accused No.3) were partners of the Consolidate Farmers and Co. Kup Kalan (accused No.1). Accused No.1 had borrowed a sum of Rs.15,00,000/- from

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the petitioner-complainant and in order to discharge the aforesaid liability, accused No.3 alongwith his partner Baldev Singh(accused No.2) had issued a cheque dated 22.04.2008, amounting to Rs.15,00,000/- in favour of the petitioner. When the said cheque was presented by the petitioner to his banker, the same was returned to him unpaid with the remarks 'Insufficient Client Balance'. Thereafter, a legal notice was served upon the said accused to make the payment of cheque amount, but the accused did not respond to the same and failed to make the payment in due course. Hence, the complaint was filed.

On the basis of preliminary evidence, respondent No.2 was summoned to face trial for having committed an offence under Section 138 of the Negotiable Instruments Act (for brevity, 'N.I.Act'). Thereafter, notice of accusation under Section 138 of the N.I.Act was served upon him, to which he pleaded not guilty and claimed trial.

The learned trial Court after having scrutinized the evidence led by the parties, convicted respondent No.2-accused under Section 138 of the N.I.Act. He was, accordingly, sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/- under Section 138 of the N.I.Act and, in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

Aggrieved of the judgment of conviction and order of sentence dated 01.04.2014 passed by the learned trial Court, the petitioner preferred an appeal before the learned Additional Sessions Judge, Sangrur. Vide impugned judgment dated 06.03.2017 passed by the learned Additional

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Sessions Judge-I, Sangrur, the appeal was allowed, thereby setting aside the judgment of conviction and order of sentence passed by the learned trial Court and the matter was remanded back to the learned trial Court to pass the verdict afresh after taking into consideration the entire evidence having been led by the parties and keeping in view the written arguments having been furnished by the learned defence counsel during the course of the trial and also to pass the observations regarding the liability of the accused No.1 firm coupled with the remaining accused.

Aggrieved of the judgment passed by the learned Appellate Court, the petitioner-complainant has preferred the present revision petition.

I have heard learned counsel for the petitioner as well as learned counsel for respondent No.2 and gone through the record.

The learned Appellate Court while passing the impugned judgment has taken into consideration that accused No.1-firm was not served especially when there were reports of the Process Serving Agency that the said firm was not existing at the given address at the relevant time. Thus, it was held by the Appellate Court that the trial Court omitted to ensure the service of process upon the said firm. Accordingly, the learned Appellate Court has arrived at the following conclusion:

“14. So, the analytical appraisal of entire material and evidence on record itself leads towards the inescapable inference that the verdict passed by the learned trial Court under the given set of circumstance is not sustainable and calls for interference by this Court. Resultantly, the said verdict passed by the learned trial Court is hereby set aside and the matter is remitted back to the learned trial Court to

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pass the verdict afresh after taking into consideration the entire evidence having been led by the parties and keeping in view the written arguments having been furnished by the learned defence counsel during the course of the trial and also to pass the observations regarding the liability of the accused No.1 firm coupled with the remaining accused. The appeal of the appellant-accused No.3 stands allowed in these terms and the parties are directed to appear before the learned trial Court on 06.04.2017.”

In view of the findings recorded by the learned Appellate Court, I do not find any ground to interfere with the impugned judgment, especially when learned counsel for the petitioner could not point out any infirmity in the aforesaid reasoning given by the learned Appellate Court.

Finding no merit in the present revision, the same is dismissed.

07.11.2019

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Note:	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No