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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3877-2018 [O&M]

Date of Decision:- February 27, 2019

Charan Singh

.... Petitioner

Versus

Suresh Kumar and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Rajesh Duhan, Advocate,
for the petitioner.

Mr. Sumeet Puri, Advocate,
for respondent No.1.

Mr. Ashish Sanghi, AAG,
for the respondent State.

SHEKHER DHAWAN, J.

Present revision petition is directed against the judgment of conviction dated 7.6.2018 and order of sentence dated 11.06.2018 passed by learned Sub Divisional Judicial Magistrate, Guhla whereby the revisionist was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short, "**the Act**") and sentenced to undergo Rigorous Imprisonment for a period of Six months and to pay Rs. 3,50,000/- as compenstion within a period of two months from the date of said order.

2. The appeal filed by the revisionist was dismissed by learned Sessions Judge, Kaithal vide judgment dated 12.11.2018.

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3. Facts relevant for the purpose of decision of present revision petition; that the petitioner used to borrow money from the complainant. Petitioner had borrowed a sum of Rs.3,00,000/- for purchase of Combine – Harvester and failed to re-pay the loan. In discharge of liability, the petitioner issued cheque bearing No. 557048 dated 9.7.2016 amounting to Rs.3,00,000/- (Ex.C1) and on presentation, the cheque was dishonoured on account of “Funds Insufficient” vide memo dated 12.7.2016 (Ex. C2). The complainant issued a legal notice (Ex.C4), but despite that, the petitioner did not make the payment and subsequently complaint under Section 138 of the Act was filed before learned Magistrate.

4. During the trial, Learned Magistrate completed various proceedings, including framing of charge against the accused, recording of evidence and examining the accused under Section 313 Cr.P.C., and after considering the prosecution evidence and defence evidence held the present revisionist guilty and convicted and sentenced under Section 138 of the Act.

5. Appeal preferred by the revisionist was dismissed by learned Sessions Judge vide judgment dated 12.11.2018 and as such the present revision petition before this Court.

6. At the time of arguments, learned counsel for the petitioner contended that the signatures on the cheque (Ex.C1) were denied by the petitioner and there was no Document Expert examined by the complainant to prove the signatures of the present petitioner. As such, the basic ingredients of offence alleged against the petitioner is not proved and both the Courts below have completely ignored this fact while

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recording judgment of conviction and dismissing the appeal.

7. While arguing on this point, learned counsel for the respondents contended that the issuance of cheque was not disputed in this case, rather, the signatures were proved on the file. The petitioner had admitted his dealings with the complainant. The onus lawfully shifts upon the petitioner to prove that the signatures on the cheque were not of the present petitioner, but he has failed to do so and resultantly, learned Magistrate recorded the judgment of conviction and the appeal was rightly dismissed by learned Sessions Judge.

8. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that both the Courts below have already considered this aspect in detail and recorded the observation that onus lawfully shifted upon the petitioner once the signature/execution of cheque in dispute is admitted. In case of issuance of cheque is admitted, the existence of legal debt follows. It was for the petitioner to prove that the cheque was not for legal debt or liability which the petitioner failed to prove by leading any cogent evidence and learned trial Magistrate has already considered all these aspects while recording judgment of conviction and learned Appellate Court did not find any legal grounds to set-aside the said judgment. At this stage, there is no factual or legal error in the judgment of conviction and order of sentence passed by learned Magistrate and the judgment of learned Sessions Judge, Kaithal. The Courts below have already taken the most reasonable view in the matter of quantum of sentence which does not call for any interference in the revisional

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jurisdiction.

9. In view of the above, there is no merit in the present revision petition and the same stands dismissed.

February 27, 2019
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
Yes