IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRR-4108-2012 (O&M)

Kuldip Singh

..... Petitioner

Versus

Balbir Singh and another

..... Respondents

2. CRR-4109-2012 (O&M)

Kuldip Singh

..... Petitioner

Versus

Balbir Singh and another

..... Respondents

Date of decision: 11.03.2019

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Rahul Dev Singh, Advocate
for the petitioner(s) (in both cases).

Mr. BS Jaswal, Advocate
for respondent No. 1(in both cases).

Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

By this common judgment, above titled two revisions on similar fact are being disposed of. For brevity, the facts are being extracted from CRR-4108-2012.

Petitioner has laid challenge to the judgment dated 27.09.2012 of the Ist Appellate Court, whereby two appeals i.e. one filed by the petitioner against his conviction and other filed by respondent No. 1-complainant for enhancement of sentence were dismissed, thereby affirming the judgment of conviction and order of sentence dated 20.05.2011, holding the petitioner guilty in a complaint filed by respondent No. 1-Balbir Singh, under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act') and sentencing him to undergo simple imprisonment for a period of 1½ years and to pay a fine of Rs.2000/-. In default thereof, to further undergo simple imprisonment for two days in each complaint.

Briefly, respondent No. 1, filed a complaint under Section 138 of the Act, against the petitioner on the ground that two distinct cheques i.e. cheque No. 003503 dated 25.07.2007, amounting to Rs. 5,50,000/- was issued by the petitioner in favour of respondent No. 1-complainant, which the petitioner had taken from respondent No. 1 as partnership share in a sweet shop run by him under the name and style "Pappu Sweets", Amritsar and another cheque No. 003502 dated 14.07.2007 amounting to Rs.2,65,000/- towards friendly loan. On presentation of both the cheques, the same were dishonoured by the bank with the remarks "account closed" by the petitioner.

After holding trial, in both the complaints, petitioner was held guilty under Section 138 of the Act and sentenced as narrated above in the opening part of the judgment.

Being aggrieved, petitioner approached the Ist Appellate Court, but remained un-successful as his appeal as well as the appeal filed by respondent No. 1 for enhancement of sentence, were dismissed vide the judgment impugned herein.

Learned counsel for the petitioner *inter alia* contends that both the Courts below have failed to appreciate that respondent No. 1 did not produce any income-tax return in support of his contention that he had lent the consolidated amount of Rs. 8,15,000/- against both the said cheques to the petitioner. In case, amount of Rs.5,50,000/- was allegedly paid by respondent No. 1 towards partnership share in the sweet shop, in that eventuality, there should have been partnership deed, some regular account books or document for rendition of accounts. In the absence of any such corroborative document from the side of respondent No. 1, his complaints ought to have been dismissed by the trial Court.

On the other hand, learned counsel for respondent No. 1-complainant refuting the above submissions of learned counsel for the petitioner pleaded the legality and validity of judgments of both the Courts below.

Having given thoughtful consideration to the rival submissions, this Court finds both the revisions completely devoid of any merit for the reasons to follow:

No question of law much less substantial has been raised in these revisions.

This Court while exercising revisional power has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond the jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to point out any such infirmity.

The arguments raised by learned counsel for the petitioner have already been dealt with by both the Courts below in detail, after appreciation of evidence. Therefore, their further discussion would be repetition and wastage of precious time of this court.

No provision demands any corroborative evidence in a complaint under Section 138 of the Act. Rather, Section 139 of the Act protects valuable right of a complainant which mandates to draw presumption in favour of holder of the cheque. Therefore, both the Courts below rightly drawing presumption in favour of respondent No. 1 under Section 139 of the Act have rejected the plea of petitioner, while accepting his claim.

The petitioner did not lead any evidence to corroborate his bald statement. Even he did not examine his wife in his defence to corroborate the stand taken by him in his statement under Section 313 Cr.P.C. that her husband was a domestic servant in the in-laws house of respondent No. 1. Therefore, an adverse inference is required to be drawn against him that he intentionally and deliberately did not examine his wife in support of his stand, being guilty in his mind for deposing falsely in Court and under fear that his wife would not be able to withstand the test of her testimony in her cross-examination.

For the reasons recorded above, both the revisions, being meritless are dismissed.

I have gone through the judgments of both the Courts below and find no illegality or perversity in the same.

A copy of this order be sent to the Chief Judicial Magistrate, Amirtsar, who shall issue warrants of arrest against the petitioner to undergo remaining part of the sentence.

March 11, 2019 **(RAMENDRA JAIN)**
rishu **JUDGE**

Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**