

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

CRR-2340-2007(O&M)
Date of decision:-4.3.2020

Bhoor Singh @ Balbir Singh

...Petitioner

Versus

Shinder Singh

...Respondent

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

Present: Mr.S.K. Arora, Advocate
for the petitioner.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that complainant Shinder Singh had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as *the Act*) against accused Bhoor Singh alias Balvir Singh on the allegations that to discharge his financial liability, the accused had issued a cheque bearing No.QGT-486601 dated 7.11.2000 in the sum of Rs.1,40,000/- from his account bearing No.1191/II drawn on Kapurthala Ferozepur Kashetrya Gramin Bank, Branch Kuharianwali in favour of the complainant giving assurance

at that time that on presentation, the cheque would be encashed. The complainant accordingly presented the cheque with his banker for encashment on 2.2.2001 but it was returned uncashed on account of insufficient funds in the account of the accused. The complainant was informed accordingly. Thereafter, the complainant sent notice through his counsel to the accused on 3.2.2001 calling upon him to make the payment of the cheque amount within 15 days of receipt of notice but accused refused to accept the notice. As such, the complainant has filed a complaint in question.

After recording preliminary evidence, the accused was summoned. Accused put in appearance and was admitted to bail. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

During the course of his evidence, the complainant got his statement recorded as PW1 and repeated on oath his case as given in the complaint. He proved on record cheque Ex.P1, carbon copy of notice Ex.P2, postal receipt Ex.P3, undelivered returned notice Ex.P4, acknowledgement Ex.P5. He further examined PW2 Banwari Lal, Clerk – cum – Cashier, who proved on record memo Ex.P6, account opening form Ex.CW2/1, attested copy of account opening form of Bhoor Singh Ex.CW2/2, attested copy of security form Ex.CW2/3 and statement of account of Bhoor Singh Ex.CW2/4. Thereafter, the evidence of the complainant was closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against

him in the evidence of the complainant were put to him. The accused denied the assertions and pleaded innocence.

During his defence evidence, accused examined Sh.Dharmvir Mehita, Manager of Kshetriya Bank, who proved attested copy of form of specimen signatures Ex.D1, statement of account of Bhoor Singh Ex.D2 and attested copy of security forms register Ex.D3.

After hearing arguments, learned trial Magistrate came to the conclusion that the accused had committed offence under Section 138 of the Act. The accused was convicted for an offence under Section 138 of the Act vide judgment dated 17.10.2006 and vide order of that very date, he was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default thereof, to undergo further rigorous imprisonment for a period of fifteen days. It was directed that a sum of Rs.4,500/-, if recovered, be paid to the complainant as compensation.

The accused challenged judgment of his conviction and sentence order by way of filing appeal in the Court of Sessions, which was, however, dismissed by learned Sessions Judge, Ferozepur vide judgment dated 16.11.2007, in the process affirming the judgment of conviction and order of sentence passed against the accused by the trial Court. Accused was taken into custody and sent to jail to undergo the sentence.

Feeling dissatisfied, the petitioner has filed the present revision petition before this Court, notice of which was issued to the respondent, who put in appearance through counsel. Subsequently, there

was no representation on behalf of the respondent/complainant.

I have heard learned counsel for the petitioner besides going through the record.

Learned trial Magistrate keeping in view the oral as well as documentary evidence adduced by the complainant has come to the conclusion that all the necessary ingredients of offence under Section 138 of the Act were fulfilled and therefore had rightly convicted and sentenced the accused. Learned Sessions Judge, Ferozepur was fully justified in upholding the judgment of conviction and order of sentence, in the process dismissing the appeal filed by the accused.

Both the Courts have come to the conclusion that accused had issued the cheque in question in favour of the complainant on account of discharge of financial liability but the cheque was returned uncashed on account of insufficient funds in account of the accused. Thereafter, the complainant had served notice upon the accused calling upon him to make the payment of the cheque amount within 15 days of receipt of notice but accused refused to accept the notice. That refusal was taken to be due service for the reason that address mentioned in the envelope was the same on which the service of the accused had been effected in the instant case. Since the accused had failed to make the payment of cheque amount within 15 days from the receipt of notice, a cause of action did arise to the complainant to file a complaint and necessary ingredients of Section 138 of the Act stood established. Therefore, the accused was rightly convicted.

As far as the sentence part is concerned, since the accused is

not shown to have paid any part of the cheque amount to the complainant till date i.e. after a passage of more than 19 years and no mitigating circumstance has been brought to my notice, no ground is made out to reduce the sentence.

The complainant had successfully proved his case, whereas the accused had failed to render any justifiable explanation for his alleged false implication in this case.

The judgment of conviction and order of sentence passed by the learned trial Magistrate are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Similarly the judgment passed by learned Additional Sessions Judge, Ferozepur contains discussion of facts, evidence adduced by the parties and legal position and reasons for affirming the judgment passed by the trial magistrate and dismissing the appeal are given. I do not find any illegality and infirmity with the impugned judgments.

Even otherwise, law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no interference with such judgment is to be done.

Finding no merits in the revision petition, the same stands dismissed.

Petitioner/accused – Bhoor Singh is stated to be on bail

granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Ferozepur is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

4.3.2020

(H.S.MADAAN)

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JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**