

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

CRR-1519-2011(O&M)

Date of decision:-18.3.2020

Satish Verma

...Petitioner

Versus

Varinder Kumar

...Respondent

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

Argued by: Mr.Sukhdeep Singh, Advocate for
Mr.Parminder Singh, Advocate for the petitioner.

Mr.Rajender Kumar, DAG, Haryana.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that complainant Varinder Kumar had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as *the Act*) against accused Satish Verma son of Sh.Amar Singh, resident of Urban Estate, Karnal on the allegations that the accused had borrowed a sum of Rs.80,000/- from him for his personal requirement in October, 2002 agreeing to return the said amount with interest @ Rs.2% per month; the accused had issued a post dated cheque bearing No.0098504 dated 10.2.2003 drawn on Union Bank of India, Sector-6 Branch, Karnal in favour of the complainant; in February, 2003, the complainant approached the accused for repayment; the accused requested the complainant to present the cheque after due date; the complainant accordingly did so by presenting it with his banker i.e. Bank of Punjab Ltd., Kunjpura Road,

Karnal, which in turn sent it to banker of the accused for clearance but the cheque was received back uncashed due to insufficiency of funds in the account of the accused and the complainant was informed accordingly vide memo of the bank dated 28.2.2003; thereafter the complainant served a legal notice dated 14.4.2003 upon the accused calling upon him to make the payment of cheque amount within one month from the date of issuance of the cheque, however, the legal notice was received back undelivered because the accused had refused to accept the same; a copy of the legal notice was also sent under postal certificate, which was duly received by the accused but he failed to comply with the notice. Thereafter, the complainant brought the complaint in question in the Court of competent jurisdiction at Karnal.

After recording preliminary evidence, the accused was ordered to be summoned to face trial for the offence under Section 138 of the Act vide order dated 9.8.2003. He 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 CW1 and repeated on oath his case as given in the complaint. He proved various documents i.e. original cheque as Ex.C2, memo dated 28.2.2003 as Ex.C3, copy of legal notice dated 14.3.2003 as Ex.C4, postal receipt as Ex.C5, UPC receipt as Ex.C6, registered envelope as Ex.C7 and registered AD as Ex.C8.

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 allegations contending that he was innocent and had been falsely involved in this case.

During his defence evidence, accused examined Sh.Sumit Arora, Handwriting & Fingerprint Expert, Chandigarh as DW1, Sunil Kumar as DW2 and Vijay Kumar as DW3 and placed on file several documents i.e. report of Handwriting Expert as Ex.DW1/A, Photographic enlargements as Ex.DW1/B to Ex.DW1/D, passbook of Sunil Kumar as Mark-A, negatives Mark-B and certified copy of vakalatnama of Sh.P.S. Rana, Advocate in complaint case titled 'Satish Kumar Vs. Ashok Dua etc.' as Mark-C.

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 19.2.2010 and vide order of that very date, he was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.2,500/- and in default thereof, to undergo further rigorous imprisonment for a period of one month.

The accused challenged the judgment of his conviction and sentence order by way of filing an appeal in the Court of Sessions, which was, however, dismissed by learned Additional Sessions Judge, Fast Track Court, Karnal vide judgment dated 12.7.2011, 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.

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

The accused had raised various pleas before the Courts below to wit, that handwriting expert has proved the writing Mark-A on the passbook of the accused, which is identical to the writing in the passbook of Sunil Kumar Mark-B, which matched with admitted signatures of the complainant; that there was no evidence with regard to accused raising any loan from the complainant, though accused had borrowed some money from Sh.P.S. Rana, Advocate, a brother-in-law of the present complainant, who had taken blank signed cheques from accused, one of which had been misused by the complainant by filing the present complaint; the legal notice Ex.C4 is not signed, therefore is inadmissible and service of notice said to have been sent by the complainant to the accused is not proved. However, the Courts below particularly the trial Magistrate has dealt with such contentions in a very proper and appropriate manner. The trial Magistrate has observed that since the complainant had denied that he had scribed the cheque Ex.C2 or had made entries in the passbook Mark-A. Passbook Mark-B was not put to him during his cross-examination when he had appeared as CW1. The complainant had specifically denied the writing in body of the cheque Ex.C2 and entry in passbook Mark-A. The opinion by the Handwriting Expert cannot be taken to be final word on the issue. The reasons for

arriving at such conclusion are given in detail in para No.12 of the judgment and I do not see any reason to disagree with the same. The plea that the cheque in question had been given as security to Sh.P.S. Rana, Advocate was rejected for want of cogent and convincing evidence in that regard being available. The objection raised on behalf of the accused that cheque had been presented twice as per legal notice Ex.C4, though it is not mentioned in the complaint was rejected. It was observed that since the original notice had been sent by the advocate, absence of his signatures on the copy did not make any difference. The presentation of the cheque twice did not debar him from filing the present complaint since notice had been issued when the cheque was dishonoured for the second time only.

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 Additional Sessions Judge, Fast Track Court, Karnal was fully justified in upholding the judgment of conviction and order of sentence, in the process dismissing the appeal filed by the accused.

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, Fast Track Court, Karnal 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 – Satish Verma is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Karnal is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

18.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No