

**CRR-4845-2017,
CRR-2535-2018 and
CRR-2558-2018**

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

Date of Decision: 27.02.2020

1. CRR-4845-2017 (O & M)

Shambhu Kumar

... Petitioner

Versus

Lal Chand and another

... Respondents

2. CRR-2535-2018 (O & M)

Shambhu Kumar

... Petitioner

Versus

Lal Chand

... Respondent

AND

3. CRR-2558-2018 (O & M)

Shambhu Kumar

... Petitioner

Versus

Lal Chand

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Pranav Chadha, Advocate, legal aid counsel,
(HCLSC) for the petitioner in all the revisions.

Mr. Kulvir Narwal, Advocate,
for respondent No.1.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

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HARNARESH SINGH GILL, J.

This order shall dispose of the above-noted petitions as common questions of law and facts are involved therein.

Prayer in these revisions is to set aside the judgments dated 08.09.2017 passed by the learned Additional Sessions Judge, Jhajjar, whereby criminal appeal Nos.1 to 3 dated 14.01.2015, filed by the petitioner-accused were dismissed and judgments of conviction dated 08.12.2014 and orders of sentence dated 09.12.2014 passed by the Sub Divisional Judicial Magistrate, Bahadurgarh, in separate complaints, were upheld.

In all the three complaints, the trial Court convicted the accused-petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act'), separately and sentenced him to pay the cheques amount to the complainant within six months. In default of payment of cheques amount, he was further sentenced to undergo simple imprisonment for a period of one year.

The facts, in brief, giving rise to the present revision petitions are that respondent-Lal Chand filed three separate complaints under Section 138 N.I.Act Act, with the averments that the petitioners-accused had borrowed a sum of Rs.5,50,000/- from him in the month of July, 2003. For repayment of his outstanding liability, the accused had issued three cheques bearing Nos.328997 dated 10.01.2015, amounting to Rs.3,00,000/-, 328998 dated 20.12.2004, amounting to Rs.1,20,000/- and 328996 dated 30.11.2004, amounting to Rs.1,30,000/-, drawn on Central Bank

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of India, Jor Bagh, New Delhi. However, when the said cheques were presented for encashment, the same had got dishonoured by the drawee bank with the remarks "Exceeds Arrangements/Funds Insufficient". Thereafter, the respondent through his counsel had sent separate legal notices, calling upon the accused-petitioner to make the payment of the cheques amount, but to no avail.

On the basis of preliminary evidence led by the respondent-complainant, the petitioner was summoned to face trial for the commission of offence punishable under Section 138 of the N.I.Act.

On appearance of the accused-petitioner before the trial Court, notices of accusation under Section 138 of the N.I.Act, were served upon him, to which he pleaded not guilty and claimed trial.

In order to prove his case, the complainant, including himself, examined as many as six witnesses and tendered some documents. After closure of evidence of the respondent, statements of accused-petitioner under Section 313 Cr.P.C. were recorded in each of the complaint, wherein he had denied all the allegations levelled against him and pleaded his false implication.

The trial Court, after going through the entire evidence led by the parties, convicted and sentenced the accused-petitioner in all the complaints as stated above.

Being dissatisfied with the judgments of conviction orders of sentence passed by the trial Court, the petitioner filed three separate appeals, which had been dismissed by the learned Additional Sessions Judge, Jhajjar, vide impugned judgments

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dated 08.09.2017.

Learned counsel for the petitioner argued that the petitioner had never borrowed even a single penny from the respondent-complainant. The petitioner had neither any kind of business terms with the respondent nor related to him. Merely making omnibus statement of advancement of money by the respondent to the petitioner, it would not be sufficient to bring the case within the ambit of Section 138 of the N.I.Act. The respondent had neither placed on record any material i.e. pass-book, copy of ITR, to prove his case nor examined any independent witness to prove his assertions. He further argued that though the respondent had duly proved that he had borrowed a sum of Rs.5,10,000/- from his brother, Jai Kishan and the balance amount of Rs.40,000/- had been advanced from the earnings from his fields, yet it was not proved that the respondent had given the said amount to the petitioner. PW 2 Jai Kishan specifically deposed that an amount of Rs.5,10,000/- had been drawn by him from the bank for his own personal use. The learned counsel further contended that it was the case of complainant that the accused had taken loan and issued cheques to repay the same, but the said loan transaction had not been proved and, therefore, the conviction could be set aside. In support of his contentions, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in Vijay Vs. Laxman and another 2013 (1) R.C.R. (Civil) 980.

Learned counsel for the petitioner further contended

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that the complainant had failed to show in which connection the accused had issued the cheques, therefore, the petitioner-accused was liable to be acquitted. In support of his contentions, the learned counsel also relied upon the judgment of this Court in M/s Ganesh Flour Mills vs. Jeewan Kumar and another 2004(2) R.C.R. (Criminal) 797.

Per contra, the learned counsel for the respondent-complainant argued that the petitioner-accused had disputed the signatures on the cheques in question being forged and fabricated. The petitioner had also denied the factum of borrowing any loan from the respondent-complainant and issuance of any cheque in favour of the respondent. But to disprove the genuineness of his alleged signatures on the cheques in question in accordance with the principles of preponderance of probability, he had not examined any finger-print expert. Moreover, the drawee bank had returned the cheques with remarks 'Exceeds Arrangements' and not that 'drawer's signatures differ', so adverse inference against the petitioner had rightly been drawn by the trial Court.

Learned counsel for the respondent further argued that the complaints in question had been filed on 23.04.2005, whereas while appearing in the witness-box as DW 1 on 02.11.2013, the petitioner-accused stated that his three cheques had been stolen by Tale Ram, brother of the complainant, in November/December, 2004 and he had come to know about the said fact after the filing of the complaints by the respondent. The said plea of the petitioner-accused was not sustainable and both the courts below

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had rightly convicted the petitioner-accused.

I have heard the learned counsel for the parties and with their able assistance, have gone through the record.

It is the case of the accused that the three cheques were lost in the months of November-December, 2004, but neither any complaint to the police nor any information was given to the bank qua the same at any stage. In the present case, PW 2 Jai Kishan, brother of complainant, proved on record that a sum of Rs.5,10,000/- had been withdrawn from the bank by placing on record the bank statements (Ex.P2/A and Ex.P2/B), which had been further advanced to his brother on demand.

The petitioner has denied his signatures on the cheques in question, but has failed to produce any expert nor any such objection has been raised by the drawee bank. As far as the plea of petitioner that his three cheques were stolen in the months of November-December, 2004 and he came to know about the stolen cheques after filing of the complaints, the same has also been rightly rejected by the courts below and adverse inference has been drawn against the petitioner.

Moreover, these are revision petitions and the scope of revisional jurisdiction is vested with limited powers. In a revision petition, this Court is not to re-appreciate the evidence like Court of an appeal. Learned counsel for the petitioners has not pointed out as to how the findings given by the courts below are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence

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has not considered by the courts below. The presumption under Section 139 of the N.I.Act arose against the accused and it was first for him to rebut the same. But he failed to rebut the presumption. Rather, the complainant led even cogent evidence to prove his case beyond any doubt. The case law cited by the learned counsel for the petitioners are found distinguishable to the facts and circumstances present case, and thus, the same are not applicable in the present case.

In view of the above discussion, I find that concurrent findings given by both the courts below are based on appreciation of evidence in right perspective. In no way, the impugned judgments can be held as perverse or illegal. Accordingly, the impugned judgments of conviction 08.12.2014 and orders of sentence dated 09.12.2014 passed by the learned Sub Divisional Judicial Magistrate, Bahadurgarh, as well as the impugned judgments dated 08.09.2017 passed by the learned Additional Sessions Judge, Jhajjar, are upheld and all the revision petitions, being devoid of any merit, are dismissed.

The petitioner, who is on interim bail, shall surrender before the trial Court within 30days from the date of this judgment for serving the sentence, failing which, the trial Court shall ensure his arrest and shall send him to jail, for serving sentence awarded to him.

The office is directed to send copy of this judgment to the trial Court for compliance.

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Since the applications seeking concurrent running of sentence moved in connected two revisions, have been dismissed, no orders are called for in the present application.

Dismissed.

27.02.2020
parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

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