

CRR-203-2022 (O&M)

111

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

**CRR-203-2022 (O&M).
Decided on: March 28, 2022.**

Nishan Singh

... Petitioner

Versus

Mukesh Kumar Jain and another

... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

**PRESENT: Mr.Jashandeep Singh, Advocate, (Legal-aid-counsel)
for the petitioner.**

JASGURPREET SINGH PURI, J. (Oral)

CRM-3028-2022

Present application has been filed under Section 5 of the Limitation Act, praying for condonation of 105 days delay in filing of the present revision petition.

For the reasons recorded in the application, the same is allowed. Delay of 105 days in filing of the present revision petition is hereby condoned.

Main case

Present revision petition has been filed impugning the

orders passed by the learned Judicial Magistrate 1st Class, Faridkot dated 2.12.2016 whereby the petitioner had been convicted and sentenced to undergo simple imprisonment for a period 1 year and 6 months with fine of Rs.5000/-. Thereafter, appeal was also filed by him which has also been impugned in the present petition and his appeal was also dismissed on 16.9.2019 by the learned Additional District Judge, Faridkot.

Learned counsel for the petitioner who has been appointed as legal-aid-counsel has submitted that the orders passed by the learned trial Court as well as the learned appellate Court are erroneous in view of the fact that the petitioner had already returned at least half of the amount to the complainant-respondent and therefore, there was no occasion for the complainant to file the complaint under Section 138 of the Negotiable Instruments Act, as there was no outstanding liability.

I have heard the learned counsel for the petitioner.

Lower Court record was requisitioned and the same has been perused. Complainant-respondent no.2 had filed a complaint under Section 138 of the Negotiable Instruments Act as the petitioner had issued two cheques for total amount of Rs.4,50,000/- but since he was not able to pay the same, he issued another cheque bearing no.035872 dated 17.9.2013 for Rs.10,50,000/- which included the interest component also over the borrowed amount and said cheque of Rs.10,50,000/- was the subject matter of the complaint under Section 138 of the Negotiable Instruments Act. When the aforesaid cheque was presented for encashment, it was

dishonoured on the ground of “insufficient funds.” Thereafter, notice of demand dated 23.10.2013 was given. However, no reply was filed to the same and thereafter, the complaint was filed before the learned Judicial Magistrate 1st Class, Faridkot, and evidence was led by the complainant. While deposing before the learned trial Court, the complainant reiterated the entire version and had also filed a duly sworn affidavit EX.CW1/A and he was also cross-examined thoroughly by the learned defence counsel but as per the cross-examination and the record, nothing came out in favour of the defence.

On the other hand, the petitioner-accused did not step into the witness box and contested the case only on the ground that he was innocent.

Apart from the aforesaid CW.1, the complainant also produced and exhibited on record cheque EX.C1, memo dated 21.10.2013 EX.C2, legal notice dated 23.10.2013 Ex.C3, postal receipt EX.C4 and original registered cover EX.C5 and also examined Pardeep Kumar as CW.2.

The learned trial Court while referring to the statutory provisions of Sections 138 and 139 of the Negotiable Instruments Act and the law laid down by the Hon'ble Supreme Court in number of judgments had come to the conclusion that the signatures on the cheque were not disputed and therefore, the statutory presumption had arisen in favour of the complainant. There is nothing on the record to rebut the statutory

presumption in favour of the complainant. The cheque has been signed by the petitioner and this fact was not disputed by him and all the ingredients of Section 138 of the Negotiable Instruments Act, were fulfilled. Since the petitioner was not able to rebut any of the statutory presumption, he was convicted and sentenced by the learned Judicial Magistrate 1st Class, Faridkot. Thereafter, the petitioner preferred an appeal before the learned Additional Sessions Judge, Faridkot, which was also dismissed on 16.9.2019. The learned lower Appellate Court also considered the factual position that the petitioner did not dispute that cheque in question bears his signatures.

There are concurrent findings of facts by both the Courts below. The complainant-respondent has produced and proved the cheque EX.C1, memo dated 21.10.2013 EX.C2, legal notice dated 23.10.2013 Ex.C3, postal receipt EX.C4 and original registered cover EX.C5 but no defence evidence was led by the petitioner. The signatures on the cheque were not in dispute. The Hon'ble Supreme Court has observed that once the signatures are not disputed then the statutory presumption in favour of the complainant becomes strong and needs to be rebutted by way of cogent evidence. However, in the present case, the statutory presumption has not been rebutted at all by the defence. This Court does not find any illegality or perversity in the orders passed by both the Courts below. The scope of the Revision is confined only to the extent that when an order of the learned Court below is perverse or there is glaring illegality then in that situation,

the Revisional Court would interfere. However, in the facts and circumstances of the present case, no illegality or perversity has been found. Therefore, finding no merit in the present revision petition, the same is hereby dismissed.

Pending misc. application, if any, shall also stand disposed of accordingly.

March 28, 2022	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking	: Yes/No
Whether reportable	: Yes/No