

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

CRR-178-2020 (O&M)

Date of Decision:- 16.11.2022

Surinder Kumar

...Petitioner

Versus

State of UT Chandigarh and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Aman Sharma, Advocate, Legal Aid Counsel, HCLSC with
Mr. Surinder Kumar, petitioner-in-person.

Mr. Amit Kumar Goyal, APP, U.T. Chandigarh

Mr. Neeraj Madan, Advocate for
Mr. Vikrant Guleria, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The petitioner challenges judgment dated 5.11.2019 passed by learned Additional Sessions Judge, Chandigarh vide which an appeal filed by the petitioner challenging his conviction under Section 138 of the Negotiable Instruments Act, as recorded by learned Judicial Magistrate First Class, Chandigarh vide judgment dated 21.7.2016 has been dismissed.
2. A few facts necessary to notice for disposal of this petition are that as per the complainant Narinder Singh, Proprietor of M/s Harman Karyana Store was into business of selling grocery items and that the petitioner was known to him since long. The complainant alleged that in October, 2012, the accused requested the complainant for financial assistance to the tune of ₹3,92,000/- as the accused intended to purchase a plot and assured that he would return the same within one year. Accordingly, the complainant financed a sum of

₹3,92,000/- as friendly loan to the accused. The accused/petitioner issued cheque bearing No. 235041 dated 23.9.2013 for an amount of ₹2,00,000/- and another cheque bearing No. 235042 dated 30.9.2013 amounting to ₹1,92,000/- drawn on State Bank of India, Punjab Engineering College Branch, Sector-12, Chandigarh in favour of the complainant. However, upon presentation of the said cheques by the complainant, the same were dishonoured with the remarks 'Funds Insufficient'.

3. The complainant, in order to substantiate the allegations levelled in his complaint himself stepped into the witness box as CW-1 and also examined CW-2 Satish Kumar and CW-3 Anil Sehgal through whom various documents were got proved. The details of the documents led in the evidence are herein under :-

Ex C1	Cheque bearing No. 235041 dated 23.9.2013 amounting to ₹2,00,000/-
Ex C2	Memo dated 01.10.2013
Ex C3	Cheque bearing No. 235042 dated 30.9.2013 amounting to ₹1,92,000/-
Ex C4	Memo dated 01.10.2013
Ex C5	Legal notice dated 16.10.2013
Ex C6	Postal receipt dated 19.10.2013
Ex C7	Account statement of complainant from 01.09.2012 to 14.11.2013
Ex C8	Copy of Acknowledgment Book
Ex CW2/A	Authority Letter dated 11.9.2015
Ex CW3/A	Authority Letter dated 16.4.2016
Ex CW3/B	Account statement of accused from 01.10.2012 to 1.4.2014

4. The accused, in his defence, also led evidence and examined DW-1 Nahar Singh, DW-2 Manipal, DW-3 Daya Chand and DW-4 Krishan Lal.
5. The trial Court, upon considering the evidence, held that the complainant had led sufficient evidence as regards the advancement of loan and

dishonour of cheques issued by the petitioner for repayment of the same and consequently, vide judgment dated 21.7.2016, held the petitioner guilty of having committed the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment of two years and directed him to pay compensation to the tune of ₹3,92,000/-.

6. The aforesaid judgment dated 21.7.2016 was challenged by the petitioner by way of filing an appeal before the Court of Sessions which has been dismissed vide impugned judgment dated 5.11.2019.
7. The learned counsel for the petitioner has submitted that the impugned judgments cannot sustain as no concrete evidence was led by the complainant as regards advancement of loan and nor did the complainant establish his sources of income. It has been submitted that the amount of ₹3,92,000/- alleged to have been advanced by the complainant as a loan to the petitioner, admittedly is not in the shape of any draft or cash and as such no sanctity can be attached to the said oral assertions of the complainant.
8. This Court has considered rival submissions addressed before this Court.
9. The petitioner has not been able to disown the factum of issuance of cheques in favour of the complainant and nor has come out with any convincing explanation as regards the reasons for which the said cheques were issued by him. Once the signatures of the petitioner on the cheques in question are not disputed, a presumption can safely be drawn in favour of the holder as regards the existence of a legally enforceable debt. The fact that the cheques in question were dishonoured by the bank on account of there being no funds also stands fully established from the testimony of the witnesses examined by the complainant. Though the petitioner has led defence

evidence in the shape of statements of DW-1 Nahar Singh, DW-2 Manipal, DW-3 Daya Chand and DW-4 Krishan Lal but their statements do not inspire confidence so as to cause any dent in the case of the complainant. The trial Court as well as the lower appellate Court has marshalled the evidence at length so as to reach a finding as regards guilt of the petitioner. There is no misreading of evidence so as to justify any interference in the same. As such, the findings of guilt as recorded by learned JMIC, Chandigarh vide judgment dated 21.7.2016 and as upheld by the lower appellate Court vide judgment dated 5.11.2019 are not found to be suffering from any infirmity and are upheld.

10. The petition is sans merit and is hereby dismissed.

16.11.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No