

**(245) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR-252-2021 (O&M)
Date of Decision: 21.10.2022**

ATMA RAM

... Petitioner

Versus

JAGAT SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sunil Saharan, Advocate
for the petitioner.

None for respondent No.1.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana
for respondent No.2.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 22.12.2020 passed by the learned Additional Sessions Judge, Hisar, vide which the appeal preferred by the petitioner/accused against the judgment of conviction and order of sentence dated 30/31.05.2018 passed by the learned Judicial Magistrate, 1st Class, Hisar has been dismissed.

2. The brief facts of the case as emanating from the complaint are that the complainant and accused were known to each other for the last 10 years and were on good terms. The accused/petitioner was in need of cash and therefore, he requested the complainant to provide financial assistance to him. Considering the request of the petitioner, the complainant/respondent granted financial assistance amounting to Rs.21 lakhs on 08.01.2016 on

interest @ 1% per month for a period of six months for purchase of property. At that time the petitioner reduced into writing a document dated 08.01.2016 on a stamp of Rs.100/- in the presence of witnesses, vide which he agreed to return the said borrowed amount with interest by 07.07.2016. In order to repay the borrowed money, the petitioner issued a cheque bearing No.036327 dated 14.07.2016, amounting to Rs.22,26,000/- drawn on Union Bank of India at Hansi but it was dishonoured by the Bank with remarks “ Funds Insufficient” vide memo dated 15.07.2016 leading to the filing of the complaint.

3. After conclusion of preliminary evidence led by the complainant, the accused was summoned under Section 138 of Negotiable Instruments Act vide order dated 08.09.2016.

4. Notice of accusation under Section 138 of the Negotiable Instruments Act was served upon the accused on 10.11.2016, to which he did not plead guilty and claimed trial.

5. In after-charge evidence, complainant-respondent No.1 Jagat Singh himself appeared as CW-1 and tendered his affidavit as Ex.CW-1/A, whereby he reiterated and supported the version of the complaint. In his cross-examination, he stated that he is a retired Army person and getting a pension of Rs.32,600/- per month. He stated that accused/petitioner Atma Ram was running a tea shop where he also sold sweets. He also stated that at the time of getting financial assistance, the accused/petitioner had assured him to return the borrowed amount within six months and in order to discharge his legal liability, the accused filled up the cheque in question in his presence and handed over to him. He further stated that for getting the

cheque in question, he himself had visited the shop of the accused/petitioner. He further stated that the stamp paper for the agreement was purchased by the accused/petitioner himself. He also stated that he had transactions with the accused/petitioner since 2005, but usually the accused/petitioner was honest enough to repay the borrowed amounts on time. He stated that an amount of Rs.21 lakhs was present with him because, he was the owner of 10 acres of agricultural land; he had got Rs.10 lakhs as retiral benefits; his son was lecturer; his daughter-in-law was an English lecturer; his daughter was a Anganwari Supervisor and his younger son was a private PTI teacher.

CW2-Charan Singh witnessed the borrowing of the money and he is one of the attesting witness of the agreement in question. In his examination-in-chief, he tendered his affidavit as Ex.CW-2/A, whereby he corroborated the version of the complainant and in his cross-examination, he stated that he is working as a transporter. He knew both sides well. He stated that the complainant-respondent No.1 Jagat Singh handed over the money to the accused/petitioner at his shop in his presence and document Ex.C-1 was reduced into writing in his presence at the shop of accused/petitioner Atma Ram. He stated that the stamp paper was already available with the accused/petitioner Atma Ram.

CW3-Usha, Assistant appeared and brought the summoned record pertaining to the salary of Smt. Neelam.

CW4-Rajinder, Clerk appeared and brought the summoned record pertaining to the salary of Smt. Bittu w/o Narender.

CW5-Nihal Singh Yadav appeared and brought the summoned record pertaining to service records of PGT Narender and proved salary statement as Ex.CW-5/A.

CW6-Jain, Officer, PNB appeared and brought the summoned record pertaining to the account statement and proved the same as Ex.PW-6/1 to Ex.PW-6/4.

In his documentary evidence, the complainant/respondent tendered the following documents:-

Ex.C-1: Agreement dated 08.01.2016.

Ex.C-2 : Original Cheque amounting to Rs.22,26,000/-.

Ex.C-3 : Cheque Return Memo dated 15.07.2016.

Ex.C-4 : Legal Notice dated 26.07.2016.

Ex.C-5 : Postal Receipt.

Ex. CW-3/1 : Letter dated 12.10.2017.

Ex. CW-3/B : Salary statement of Neelam.

Ex. PW-4/A : Annual salary statement of Bittu.

Ex. PW-5/A : Salary statement of Narender.

Ex. PW-6/1 to 5 : Statements of account of Jagat Singh.

Ex. P-A : Jamabandi for the year 2011-12.

Ex. P-B : Copy of Ration Card of complainant.

Ex. P-C : Aadhaar Card of Neelam Kharb.

Ex. P-D : Aadhaar Card of Bittu.

6. The statement of the accused/petitioner under Section 313 Cr.P.C. was recorded, wherein he denied the allegations levelled against him. He opted to lead evidence in his defence. However, no defence evidence was adduced.

7. Based on the evidence led, the petitioner/accused came to be convicted and sentenced as under:-

Name of convict	Offences U/s	Sentence awarded	Compensation
Atma Ram	138 of NI Act	SI for 02 years	Rs.22,26,000/-

8. An appeal was preferred before the Court of learned Additional Sessions Judge, Hisar and the same also came to be dismissed vide judgment dated 22.12.2020.

9. It is these judgments which are under challenge in the present petition.

10. The learned counsel for the petitioner/accused contends that the respondent No.1/complainant had not produced any money lending licence in the Court to prove that he was possession and holding such a big cash amount with him. He contends that the respondent No.1/complainant was aware about the fact that the petitioner was running a small tea shop and could not have possibly advanced such an amount to the accused knowing that the return of the same would be unlikely. He contends that the document Ex.C1 dated 08.01.2016, whereby the factum of obtaining of the loan had not been executed by the petitioner. A quarrel had taken place between the sons of the petitioner/accused and respondent No.1/complainant and for that purpose the stamp paper which was purchased for writing out a compromise deed was misused. He contends that the respondent No.1/complainant was unable to prove the source of payment of a cash amount of Rs.21 lakhs stated to have been paid to the petitioner. He thus, contends that the Courts below had not properly appreciated the facts of the case and the material discrepancies in the case of respondent No.1/complainant and since the case

had not been proved beyond reasonable doubt the petitioner be acquitted of the charges levelled against him.

11. None has put in appearance on behalf of respondent No.1/complainant.

12. On the other hand, the learned State counsel has placed on record the custody certificate dated 10.10.2022 as per which the petitioner has undergone his entire sentence. He contends that the present case being a complaint case the State has a limited role to play.

13. I have heard the learned counsel for the parties.

14. Admittedly, an agreement Ex.C1 was executed by the petitioner/accused in favour of the complainant in lieu of the discharge of his liability. The cheque Ex.C2 also bears the signatures of the petitioner/accused and has been filled up in his own handwriting. There is absolutely no evidence available on the record to prove that the cheque in question did not bear the signatures of the petitioner/accused. The contention of the petitioner/accused that Ex.C1 was a blank paper on which he had affixed his signatures, which was subsequently converted into an agreement cannot be accepted. It is presumed that a person signing a document has signed the same after reading and understanding the nature of the document unless there was proof of force or fraud. In the present case there is no such evidence on the record except the bald assertion of the petitioner.

Further, in terms of Section 138 of the Negotiable Instruments Act, once the execution of the cheque is proved, there is a presumption that the same was issued in the discharge of a legally enforceable debt. The onus was on the petitioner to prove that there was no liability and he has failed in

that regard as nothing cogent has been pointed out to rebut the presumption. Further, even if a blank cheque had been given towards some liability or even as a security and the same was filled up and presented to the Bank, the accused/petitioner could not avoid his liability arising under Section 138 of the Negotiable Instruments Act unless he was able to prove that the amount as mentioned in the cheque had already been paid to the complainant who had misused the same. In the present case even that is not so.

15. From the evidence led on record, the respondent No.1/complainant has been able to prove the source of income by examining CW2-Charan Singh, CW3-Usha and CW4-Rajinder, Clerk. Similarly, the transaction in question has also been proved by an eye-witness CW2-Charan Singh. The burden thus lay with the petitioner/accused to dispute the cheque, the agreement as also the evidence produced by the respondent No.1/complainant but the petitioner/accused has failed to establish his claim that the cheque had been misused and was only issued as a security cheque or that the agreement Ex.C1 was an outcome of force or fraud.

16. Thus, in view of the clear and cogent evidence led by respondent No.1/complainant which remains unrebutted, I find no merit in the present petition. Therefore, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

21.10.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No