

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

CRR-2284 of 2022 (O&M)

Date of decision : December 19, 2022

Sushil Sharma

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. Advocate General, Haryana.

PANKAJ JAIN, J. (ORAL)

The petitioner is aggrieved of the judgment passed by the Additional Sessions Judge, Gurugram whereby his appeal against the order of conviction for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 and order of sentence whereby he has been sentenced to undergo sentence for a period of one year and six months along with compensation of Rs. 30,00,000/- was dismissed affirming the same.

Learned counsel for the petitioner contends that the case put forth by the complainant with respect to the payment of Rs. 25 lacs in cash is highly unbelievable. No evidence has been brought forth by the complainant to show the sources of such funds and thus, both the courts erred in disbelieving the petitioner

and holding him guilty of offence punishable under Section 138 of the Negotiable

Instruments Act, 1881.

I have heard learned counsel for the petitioner and have gone through the record of the case.

As per the case of the complainant the accused approached complainant to sell plot and on payment of Rs. 25 lacs by the complainant an agreement to sell was executed which was also signed by the marginal witnesses. Later on, the parties agreed to cancel the same and thereupon the petitioner-accused admitting his liability and in order to discharge the same issued cheque of Rs.25 lacs withdrawn on Union Bank, Gurugram which was later on dishonoured owing to insufficient funds and is subject matter of present proceedings. The trial court after analyzing the evidence threadbare found that:

“11. Here, this court is of the view that it is admitted by the parties that Ex. CWI/A i.e. agreement to sell was executed by accused in favour of complainant and the same was signed by complainant, accused, wife of accused and one of the witness-Abhimanyu. This burden was on the complainant to prove such agreement and for the same, admission stand on the part of the accused that signature on the agreement belongs to him as well as CW2-Abhimanyu was also examined who is attesting witness of such agreement. He has also affirmed about the payment. Moreover, in the agreement itself, two cheques have been mentioned by which Rs. 10 lacs was given and rest of the amount of Rs. 15 lacs was given by complainant to accused in the form of cash as submitted by him. Undoubtedly, there is no bank account statement to show the withdrawal of cash but the capacity of complainant is not disputed. Even the copy of the cheques is placed on record as Ex. CWI/G and Ex. CW1/H and in order to show the capacity to give these 15 lacs, Ex. CW1/I has been placed on record which complainant executed and got the sale consideration which helped

him to arrange the funds in order to pay it to the accused.

12 At this stage, cross-examination of complainant need to be highlighted wherein there is no suggestion about signature being forged rather a complete different defence has been raised that some cousin of accused namely Anil has got this agreement executed. There was no doubt raised upon the genuineness of this document Ex. CWI/A even statement of CW2 affirms the execution of these document, although, he admitted that Anil Sharma who is cousin of accused is also running property dealing work. Here, accused has tried to show that in the year 2011 itself, this property which was in the name of accused and his wife has been sold to DW4 by dint of registered sale-deed as brought on record by DW-3. Even, if this fact is correct then also, it is the fault of accused that despite knowing about the execution of sale-deed in the year 2011, he has entered into agreement to sell. In addition to this, DWI admitted that cheques which were taken by him from complainant, through agreement to sell got encashed. He also admitted his signature on the present cheque and there is no clarification of signing this agreement in ignorance because he is educated and he was well aware about his property still he entered into this agreement when he was no more the owner. He accepted the amount from complainant and in return of the same, he gave this cheque but the same was dishonoured. He was unable to clarify any of his defence. Although, he has filed the complaint against Anil but that does not waive off his liability towards complainant because he is the one who himself represented as owner and accepted the sale consideration. So, he stood as the legal debtor towards complainant but his cheque for repayment was also dishonoured. Therefore, none of the presumption helps to deny the guilt.”

The aforesaid findings have been affirmed by the appellate court.

Learned counsel for the petitioner apart from reiterating that the complainant failed to produce the sources of fund has not been able to show any infirmity in the findings recorded by the trial court.

In the considered opinion of this Court, both the courts below have

analyzed the evidence on record and have appreciated the facts of the case in the

light of the settled proposition of law and no legal infirmity can be found with the findings recorded by the courts below.

As per the settled proposition of law scope of revision is much limited as compared to the scope of appeal. The revisional jurisdiction can be exercised by the High Court in the cases of legal infirmities and as per the series of the precedents some of the illustrative categories are:

- i) where the trial court has wrongly shut out evidence which the party wish to produce.
- ii) where the admissible evidence brought on record by the defence has been wrongly brushed aside as inadmissible.
- iii) where the trial court had no jurisdiction to try the case and yet the accused stands convicted.
- iv) where the material evidence has been overlooked either by the trial court or the appellate court or the order has been passed by considering irrelevant evidence.
- v) where the conviction is based upon a view which is impossible and improbable.

Learned counsel for the petitioner has not been able to point out any infirmity in the impugned judgments which would warrant interference while exercising revisional jurisdiction.

As a sequel of the aforesaid discussion, there is no reason to interfere in the

present case. Consequently, the present revision petition is ordered to be

dismissed being without merit.

Since the main revision petition has been decided, all the pending applications, if any shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

December 19, 2022

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Whether speaking/reasoned	Yes
Whether Reportable :	Yes