

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on 7th April, 2022
Pronounced on: April , 2022
CRR No. 3148 of 2019

Anil Sharma

Petitioner

Versus

State of Haryana and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J. S. Hooda, Advocate for
Mr. Neeraj Kumar, Advocate for the petitioner.

Mr. Gurmeet Singh, Assistant Advocate General, Haryana.

AVNEESH JHINGAN, J (Oral):

The petitioner is before this court in the criminal revision aggrieved of the conviction under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

The facts shorn off unnecessary details are that Anil Sharma (petitioner) and Smt. Devi borrowed loan of Rs.2,50,000/- from Rakesh Malik (complainant). The loan was agreed to be repaid in monthly instalments of Rs.20,420/-, starting from 5.11.2011. There was default in repayment. In discharge of the liability, a cheque bearing No. 020764 dated 26.9.2014 amounting to Rs.5,00,000/- drawn on Punjab National Bank was issued by the petitioner in favour of the complainant. On presentation, the cheque was dishonoured with the endorsement "Insufficient Funds". After giving notice a complaint was filed.

To prove his case, the complainant himself deposed, tendered an affidavit, examined Deputy Manager, official of the Bank and produced

evidence by way of cheque return memo, legal notice, proof of delivery thereof and account statement.

The petitioner examined his brother-in-law (*Jija*)- Narnder Kumar as DW1 and produced an account statement.

The defence taken by the petitioner was that the loan was repaid as his brother-in-law had paid Rs.3,00,000/- to the complainant on 24.2.2014 out of which Rs.20,000/- was returned by the complainant.

The deposition of Narender Kumar-DW1 was not found worth reliance. The petitioner and Smt.Devi were convicted vide judgment dated 22.8.2017 and by order dated 11.9.2017, sentenced one year rigorous imprisonment and to pay compensation of Rs.4,00,000/- under Section 357(3) Cr.P.C.

In appeal, Smt. Devi was acquitted considering that she was neither summoned nor notice of acquisition was served on her. Conviction and sentence of the petitioner was upheld.

Learned counsel for the petitioner submits that the trial and the appellate courts have failed to correctly appreciate the facts and evidence adduced. The petitioner had re-paid the loan. DW1-Narender Kumar had deposed in favour of the petitioner stating that Rs.3,00,000/- were paid to the complainant on 24.2.2014 and he returned Rs.20,000/- from the said amount.

Heard learned counsel for the petitioner at some length and perused the record.

The only issue is as to whether the petitioner was able to rebut the presumption raised under Sections 118 and 139 of the Act.

The deposition of DW1-Narender Kumar was found lacking in inspiring confidence. In his examination-in-chief, he stated that Rs.3,00,000/-were paid to the complainant to settle the account and he returned Rs.20,000/- to Narender Kumar and complainant told that the cheque issued by the petitioner was in his office and would be returned later. DW1 faltered in the cross-examination, wherein he stated that he is not aware that a cheque was issued by the petitioner to the complainant for re-payment of the loan. The court appreciated that the transactions between the complainant and the petitioner were in written documents, whereas alleged repayment of loan was neither recorded in writing nor there was any receipt.

There is no quarrel on the proposition that presumption under Section 139 of the Act is rebuttable. In the present case, the trial court and the appellate court recorded a concurrent finding that the only witness produced for rebutting the presumption was not worth reliance.

It is well settled law that revisional jurisdiction is limited. No case is made out of error of law or non-consideration of relevant evidence or consideration of irrelevant material, calling for interference in impugned orders.

The revision petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

April ,2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |