

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

107

**CRR-2816-2022 (O&M)
DECIDED ON: DECEMBER 16, 2022**

SARVINDER KUMAR @ SARVENDER KUMAR @ SAUVINDER

... Petitioner

VERSUS

SUKESH

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sapan Dhir, Advocate, for the petitioner.

SANDEEP MOUDGIL, J

CRM-48898-2022

Application is allowed as prayed for.

CRR-2816-2022 (O&M)

The instant Revision Petition has been filed for setting aside the impugned judgments/orders dated 05.03.2021/15.03.2021 and 17.10.2022 passed by the Judicial Magistrate Ist Class, Panipat affirming the judgment of conviction by dismissing the appeal and the Addl. Sessions Judge, Panipat convicting and sentencing the petitioner under Section 138 of the Negotiable Instruments Act, 1988 (hereinafter to be referred to as 'N.I. Act'.)

Succinctly, the case of the petitioner is that the respondent-complainant had lodged a complaint under Section 138 of the N.I. Act on the ground that the petitioner had borrowed a friendly loan from the respondent-complainant and in order to discharge his lawful and legal liability, the petitioner had issued Cheque No.259271 dated 24.01.2018 for a sum of Rs.3,50,000/- drawn on Oriental Bank of Commerce in favour of the respondent-complainant. The respondent-complainant presented the said cheque to his banker for encashment, however, the same was dishonoured

due to the reason “account blocked” vide returning memo dated 29.01.2018. Accordingly, legal notice dated 06.02.2018 the respondent-complainant lodged a criminal complaint against the petitioner under Section 138 of the N.I. Act.

Upon filing of complaint, the petitioner was summoned and tried by the trial Court and upon conclusion of trial, the trial Court found the petitioner guilty of the offence punishable under Section 138 of the N.I. Act and consequently convicted the petitioner vide judgment dated 05.03.2021 and sentenced the petitioner vide order 15.03.2021 to undergo rigorous imprisonment for a period of one year and six months besides payment of compensation of Rs.5,25,000/- to the respondent-complainant under Section 357(3) of the Cr.P.C.

Feeling aggrieved of the said judgment of conviction and order of sentence, the petitioner-accused preferred an appeal before the Addl. Sessions Judge, Panipat, who, after hearing both the parties, did not find any merit in the appeal and dismissed the same vide judgment dated 17.10.2022 while upholding the judgment/order dated 05.03.2021 and 15.03.2021 passed by the trial Court.

Consequently, the petitioner has knocked the doors of this Court seeking relief against the impugned judgments/orders.

The learned counsel for the petitioner contends that both the Courts below have utterly failed to appreciate the defence evidence led by the petitioner. He further contends that the respondent-complainant has not been able to prove his case and lending of friendly loan to the petitioner. Both the Courts below have not perused the case file and evidence judiciously and have not applied their judicious mind. They have given undue weightage to

the case of the respondent-complainant and have totally ignored the defence version. He further contends that both the Courts below have not appreciated and have ignored the basic law and the relevant laws have not been considered which were produced by the defence counsel. The findings given by the Courts below are against law and facts. Hence, the impugned judgments/orders of conviction and sentence are liable to be set aside and the petitioner is liable to be acquitted.

I have heard the learned counsel for the petitioner at length and have gone through the material available on record with his able assistance.

After hearing the learned counsel for the petitioner-accused, this Court is of the considered opinion that in a complaint under Section 138 of the N.I. Act, the Court has to see at the first instance that as to whether the cheque has been issue in favour of the complainant and that the cheque in question bears the signatures of the accused. Once the accused admits his signatures on the cheque, the onus shifts upon the accused to rebut the presumption under Section 139 of the N.I. Act. If the accused succeeds in rebutting the said presumption, he may be exonerated of the offence and acquitted, otherwise, the Court may convict/sentence the accused.

Perusal of the record clearly shows that the petitioner-accused has nowhere denied his signatures on the cheque in question. The entire evidence shows that the petitioner-accused has stressed upon proving the financial capacity of the complainant, relation between the petitioner-accused and the respondent-complainant, knowledge of respondent-complainant with regard to residential address of the petitioner-accused and the respondent-complainant to be an income tax assessee or not. This Court has failed to see any cogent and material evidence on the part of the petitioner-accused, which

may show that presumption under Section 139 of the N.I. Act has been successfully rebutted by the petitioner-accused. On the other hand, the respondent-complainant has proved his case very well by bringing on record the Cheque in question, which bears the signature of the petitioner accused, the dishonor memo dated 29.01.2018, the statutory notice dated 06.02.2018, postal receipt with regard to service of statutory notice upon the petitioner-accused. It is also apparently clear from the perusal of the record that the petitioner-accused has not even answered the legal notice served upon him by the respondent-complainant. The petitioner-accused has produced one Satnam as DW-1 in order to prove his case. No other defence evidence has been led by the petitioner-accused to disprove the allegations levelled in the complaint. Even otherwise, said Satnam Singh has himself admitted in his deposition that the petitioner-accused is his brother-in-law. Meaning thereby, the petitioner-accused has not examined any independent witness to prove his defence. The said defence witness namely Satnam, being a close relative of the petitioner-accused, may be construed as an interested witness and thus, his deposition is not credible and liable to be ignored. No other defence evidence has been led by the petitioner-accused on record.

From the perusal of the entire record, it is crystal clear that the petitioner-accused has utterly failed to rebut the presumption under Section 139 of the N.I. Act and as such, I do not find any illegality, perversity and impropriety in the judgments/orders passed by the Courts below. Hence, the same are affirmed and the present Revision Petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

DECEMBER 16, 2022

sham

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No