

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

CRR-740-2023 (O&M)
Date of Decision: 17.05.2023

JASWANT SINGH

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Dr. Rau P.S. Girwar, Advocate
for the petitioner.

Mr. Aditya Kapoor, A.A.G., Punjab.

HARSH BUNGER, J. (ORAL)

The present revision petition has been filed under Section 401 of the Code of Criminal Procedure (for short 'the Cr.P.C.') for setting aside of the judgment of conviction under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') as well as the order of sentence dated 28.10.2021 passed by learned Judicial Magistrate Ist Class, Bathinda. A further prayer has been made for setting aside the judgment dated 03.01.2023 passed by learned Sessions Judge, Bathinda; whereby, the appeal filed by the petitioner against the aforesaid judgment of conviction and order of sentence dated 28.10.2021; was dismissed.

2. Briefly, respondent No.2-complainant filed a complaint under Section 138 of the N.I. Act read with Section 142 of the N.I. Act and 420 of the IPC, by alleging that the petitioner herein had been purchasing coal from respondent No.2-complainant on credit/cash basis from time to time and had been making the payments from time to time. It was averred that in the month of May/June, 2015, the present petitioner purchased coal for his brick kiln on credit basis for Rs.5,87,100/- and he made a partial payment

to the tune of Rs.1,07,000/- during this period and an amount of Rs.4,80,100/- was outstanding against the petitioner and in discharge of his lawful existing liability, he issued a cheque bearing No.005170 dated 03.08.2016 for a sum of Rs.4,80,000/- in favour of respondent No.2-complainant from his account maintained with 'Axis Bank Limited', Chandigarh Branch with the assurance that the same would be honoured upon its presentation. However, when the said cheque was presented for encashment, the same was dishonoured vide Memo dated 12.10.2016 with the remarks "*funds insufficient*". Thereafter, respondent No.2-complainant got issued a legal notice dated 09.11.2016 upon the petitioner herein and upon failure to make the payment within the stipulated period, the afore-said complaint was filed.

3. In the preliminary evidence, respondent No.2-complainant (Om Parkash) appeared as CW-1 and tendered documents Exhibits C-1 to C-4 and after considering the same, the petitioner was summoned and subsequently, notice of accusation was served upon him vide order dated 25.03.2019, to which, he pleaded not guilty and claimed trial.

4. After service of notice of accusation upon the petitioner, respondent No.2-complainant appeared as CW-1 and was cross-examined. He further tendered attested copies of ledger entries Ex. C-5 and Ex. C-6 and closed his evidence.

5. After closure of evidence of respondent No.2-complainant, the statement of the petitioner was recorded under Section 313 of the Cr.P.C.; wherein, he pleaded innocence and claimed false implication. The petitioner submitted that he did not purchase any coal from respondent No.2-complainant/firm because his license No.824 had been expired on 24.01.2015 and then he stopped his brick-kiln and after that, no transaction

was held between respondent No.2/complainant and the petitioner. A further stand was taken that one Rajesh Kumar was partner of Dharam Singh, who is the son of the petitioner and it was Rajesh Kumar, who had taken the cheque in question from the Office of his son Dharam Singh and handed over the same to respondent No.2-complainant; whereupon, the afore-said complaint was filed by respondent No.2-complainant in connivance with Rajesh Kumar, in order to grab the amount from petitioner-Jaswant Singh.

6. In defence evidence, the petitioner examined one Rajat Jindal, Inspector Food and Supply, Bathinda, as DW-1 and closed his evidence.

7. The learned trial Court after appreciating the evidence available on the record, convicted the petitioner under Section 138 of the N.I. Act vide judgment of conviction dated 28.10.2021 and vide an order of even date, the petitioner was sentenced as under :-

<i>Offence u/s</i>	<i>Sentence</i>
<i>138 of the N.I. Act</i>	<i>Imprisonment for one year, besides payment of compensation to the complainant to the tune of cheque amount i.e. Rs.4,80,000/- along with interest @ 9% per annum from the date of issuance of cheque in question till the date of passing of judgment i.e. 28.10.2021.</i>

8. Accordingly, the petitioner has filed the present revision petition, challenging the afore-said judgments passed by the learned trial Court as well as by the lower Appellate Court.

9. Learned counsel for the petitioner submits that the impugned judgments passed by the Courts below are erroneous as the same have been rendered by ignoring the material on record. Learned counsel for the petitioner further submits that the learned Courts below have failed to

consider and appreciate the specific plea taken by the petitioner that he had not purchased any coal from respondent No.2-complainant because his license No.824 of brick kiln stood expired on 24.01.2015. It is further submitted that respondent No.2-complainant had failed to produce any bill/invoice of alleged delivery of coal to the petitioner and the petitioner has been wrongly convicted and sentenced under Section 138 of the N.I. Act. Accordingly, it is prayed that the present criminal revision petition may be accepted and the impugned judgment of conviction and order of sentence passed by the learned trial Court as well as the judgment passed by the learned lower Appellate Court, upholding the judgment of conviction passed by the trial Court, may be set aside and the petitioner may be acquitted.

10. I have heard learned counsel for the petitioner and have perused the paper-book as well as judgments passed by the learned trial Court as well as by the learned lower Appellate Court.

11. As regards the contention raised by learned counsel for the petitioner that the petitioner did not purchase any coal from respondent No.2-complainant because his license No.824 of brick kiln stood expired on 24.01.2015 is concerned, the said contention has been duly considered by the Courts below and discussed in detail. A further plea of the petitioner that the complainant failed to produce any bill/invoice of the alleged delivery of coal to the petitioner, has also been considered and dealt with by both the Courts below in detail. The learned trial Court, after appreciating the evidence, returned the following findings :-

13. It is the case of complainant that in the month of May/June, 2015, the accused purchased coal from his brick kiln for Rs.5,87,100/- and made partial payment of Rs.1,07,000/-. In discharge of his lawful liability, accused

issued cheque No.005170 dated 30.08.2016 for a sum of Rs.4,80,000/- which was dishonoured when presented for encashment due to "Funds Insufficient."

In order to prove its case, complainant Om Parkash himself stepped into the witness box as CW1 and vide his duly sworn affidavit Ex.CW1/A toed the line of the averments made in the complaint.

14. Per contra, learned defence counsel vehemently argued that the complainant has failed to establish its case against the accused beyond shadow of doubt. In the statement under Section 313 Cr.P.C., the accused took specific defence that he did not purchase any coal from complainant firm because his license No.824 was expired on 24 January, 2015 then he stopped brick kiln and after that no transaction held between complainant and accused. He has further submitted that Rajesh Kumar was partner of Dharam Singh who is son of accused. Rajesh Kumar took the cheque in question from the office of Dharam Singh (son of accused) and handed over the same to complainant Om Parkash and thereafter, complainant filed the present complaint in connivance with Rajesh Kumar in order to grab the amount from accused Jaswant Singh.

15. Learned counsel for accused contended that complainant has failed to place on record any bill/invoice of alleged sale/delivery of coal to the accused. However, during cross examination complainant specifically stated that he got delivered the coal directly to the accused from Guwahati and this fact has not been by the accused even by putting the suggestion to the complainant during cross examination. The complainant has produced on record ledger for the year 2015-16, perusal of which shows that on 26.05.2015 Rs.2,58,240/- has been debited in the account of the accused and on 02.06.2015 Rs.3,28,860/- has been debited in the account of the accused for 27360 and 35040 weight respectively. The corresponding entry

regarding the same weight has been debited in the account of Vinod Kumar in the same dates in ledger Ex.C6. Learned counsel for complainant on the strength of these entries has argued that the coal was directly got delivered from Vinod Kumar of Guwahati, which stood proved from ledger Ex.C6. So, the non-production of the bill pales into significance.

16. The next contention of learned counsel for accused is that the complainant has failed to prove legally enforceable debt. The accused never issued the cheque to the complainant, rather, the cheque was taken by Rajesh Kumar from the office of Dharam Singh son of the accused and handed over it to the complainant, who in connivance with Rajesh Kumar fabricated the cheque to grab amount from accused. But this contention is not tenable. As per the complainant, out of total Rs.5,87,100/- the accused made partial payment of Rs,1,07,000/- which has been duly reflected in the ledger Ex.C5. Moreover, during the cross examination of CW1 the accused has not denied it. Rather it has been suggested to the complainant that the accused made the payment of coal and the complainant has not delivered coal to the accused. From the scrutiny of the entire cross examination of CW1, it appears that the accused has not denied the payment of aforesaid amount to the complainant. Even in the statement under Section 313 Cr. P.C., the accused has stated that his license No.824 has been expired on 24.01.2015, then he stopped brick kiln and after then no transaction held between the complainant and accused. In these circumstances, it can be safely inferred that the accused has admitted his transactions with the complainant. The learned defence counsel has laid much stress on the point that the license of his brick kiln was suspended vide Ex.D1 and Ex.D2, so there was no occasion to the accused to get coal from the complainant. But this contention can not be accepted because it is the case of complainant that in the month of May/June, 2015 the coal was purchased by the accused. During cross examination,

CW1 has stated that he do not know if the license of the brick kiln of accused was suspended in the year 2014. He further stated that in 2015, the brick kiln was operational. From the close scrutiny of Ex.D1, it appears that on 25.06.2015 the license of brick kiln was suspended, the license was cancelled on 10.02.2016 vide Ex.D2. So, the accused has failed to prove that the brick kiln was not operational in the year 2015.

17. Therefore, even after raising the probable defence, accused has failed to prove on record the fact that said cheque has not been issued by accused in discharge of his legally enforceable liability. Moreover, the accused has not disputed his signatures on the cheque, thus, the presumption under Section 139 of Negotiable Instruments Act has arisen in favour of complainant and it can be legally inferred that the cheque has been drawn for consideration on date which the cheque bears. The presumption also arises in favour of complainant that he is holder of cheque in due course as per Section 118 of Negotiable Instruments Act. The presumption also arises that the holder of cheque in question i.e. the complainant received the same in discharge of any debt or liability.

18. Thus in view of the discussion hereinabove, this Court is of the opinion that accused has failed to put off the burden to rebut the presumption raised in favour of complainant under Section 139 without leading any cogent evidence.

Consequently, the point of determination is answered in affirmative and in favour of the complainant.

Conclusion

19. In the sequel of above findings, this Court is constrained to hold that the complainant has successfully able to establish his case beyond the shadows of the reasonable doubts, consequently, the accused Jaswant Singh is held guilty and convicted under Section 138 of Instruments Act.”

12. Further, the aforesaid contentions as made before this Court, were also made before the learned lower Appellate Court and the same have been duly considered and decided by it, by holding as under :-

“16. The fact that this case involves the drawing of presumption as envisaged under Section 139 and 118 of the Negotiable Instruments Act, in favour of the complainant, as is clearly made out from the testimony of complainant Om Parkash (CW-1) and documents i.e. cheque in question Ex.C-1, cheque return memo Ex.C-2, legal notice Ex.C-3 and postal receipt Ex.C-4, when the complainant has successfully proved the fact that the cheque bore the signatures of the accused and that it was so presented and was dishonoured, fulfilling all the legal requirements of limitation envisaged under the provisions of Section 138 of the Act. The learned trial Court has dealt with this aspect of the matter in detail, in the impugned judgment which is a correct finding recorded, atleast to the extent of attracting the presumption as envisaged under Section 139 and 118 of the Negotiable Instruments Act, in favour of the complainant, on the strength of the aforesaid evidence...”

17. I may now examine the case from the aspect of the matter, whether the accused has been able to rebut the presumption as envisaged under Section 139 of Negotiable Instruments Act and also Section 118 of the Negotiable Instruments Act. In this regard, much emphasis has been placed by learned counsel for the appellant on the cross-examination of CW-1 to argue that CW-1 complainant was not in a financial capacity to have lend such a huge amount of Rs.4,80,000/- as claimed by him.

18. I have considered the said argument. From the cross-examination of CW-1, it is clear that CW-1 used to sell the coal to the accused for his brick kiln, being his customer on cash/credit basis. He goes on to depose, in his cross-examination, that he sold two truck of coal to Jaswant

Singh accused, for an amount of Rs.5,87,000/-. He also goes on to depose that he had not issued any bill to the accused regarding the same and further goes on to say voluntarily that the bill was issued in the name of the party directly from Gauhati. He further goes on to depose that the accused himself signed on the cheque, however, the same was filled in by some other person, whose name he do not know. He, however, goes on to depose that the cheque was filled in his presence. The witness further goes on to depose that he made the payment from the account of the firm, for the purchase of coal. The witness, during his cross-examination, conducted on 31.10.2019, brought the account statement of his bank as Ex.D-1 and Ex.D-2. The fact that the complainant used to sell coal to the customers, is even pleaded by the accused during his defence. The turn over of the firm of the complainant can very well be imagined and is made out from the cross-examination of CW-1 as well as the defence taken by the accused. Although the accused has failed to lead convincing evidence, showing that Rajesh Kumar took the cheque from the office of Dharam Singh, son of the accused, and handed over the same to the complainant. All the aforesaid facts does hold the court to find the financial capacity of the complainant. Moreover, the accused has not moved any application before any authority regarding misusing the cheque in question, by the complainant. There is not even a suggestion given to CW-1 indicating that he is not in a financial position to sell the coal to the accused, amounting to Rs.5,87,100/-.

19. The fact that the complainant was not in a financial capacity to sell the coal amounting to Rs.5,87,100/- to the accused, is required to be proved by the accused, as the onus thereof is on the accused, but the accused has failed to discharge the said onus and failed to rebut the presumption. Thus, this Court is of the view that the accused has failed to prove that the complainant does not have the financial capacity to sell the coal amounting to Rs.5,87,100/- to him.

20. *It is further the case of the appellant that the accused had not purchased any coal from the complainant firm and the complainant has failed to prove any business transaction between the parties, as he has not produced any bill regarding supply of coal to the accused. It is also the case of the appellant that the license of his brick kiln has been expired in the month of January 2015, vide suspension letter Ex.D-1 and Ex.D-2, proved by DW-1 and thereafter, the brick kiln of the accused had been closed and the accused had not purchased any coal from that date.*

21. *I have considered the said submission as well. As per the accused, the complainant has failed to prove any business transaction between the parties, as he has not produced any bill regarding supply of coal to the accused. From the perusal of documents on record i.e. ledger entries Ex.C-5 and Ex.C-6, it transpires that in the ledger account of the accused Ex.C-5, the complainant sold 27360 quantity of coal on 26.5.2015 and 35040 quantity of coal on 2.6.2015, which same quantity, the complainant purchased on the same dates from Gauhati, as is evident from Ex.C-6 and both the entries of Ex.C-5 & Ex.C-6 co-relate with each other, showing that the accused purchased coal from the complainant firm in the month of May/June 2015. If the aforesaid is read in conjecture with the cross-examination of CW-1 where he voluntarily explained that he got the coal directly purchased from Gauhati and supplied it to the accused, then these documents and the stand taken by the complainant, would be more reliable to be relied on, especially in light of the presumption attracted in this case, by virtue of Section 139 read with Section 118 of Negotiable Instruments Act.*

22. *So far as the reliance on the documents Ex.D-1 and Ex.D-2 as well as the testimony of DW-1 is concerned, it is opined that from the testimony of DW-1 Rajat Jindal, Inspector Food & Supply, it is evident that the witness brought the copy of letter issued by Er. A.P.Singh, as per order dated 25.6.2015 regarding issuance of suspension letter and*

also brought cancellation of license order of the brick kiln of the accused and placed the same on record as Ex.D-1 and Ex.D-2. A perusal of both these documents show that the pollution limit of the brick kiln of the accused had expired on 23.1.2015 and the office of Food & supply issued various reminders to the accused vide letters dated 14.5.2015, 3.6.2015 and 11.6.2015 for extending the limit of pollution of the brick kiln, but the accused failed to do so and as such, license of the brick kiln of the accused was cancelled vide letter dated 25.6.2015. As such, the plea taken by the accused that the license of his brick kiln had expired in the month of January 2015 and that thereafter, he had not purchased any coal from the complainant, sans merit and this Court is of the view that the accused has failed to prove the said plea of expiring the license of his brick kiln in the month of January 2015. Rather the evidence produced by the accused in the shape of DW-1 and documents Ex.D-1 and Ex.D-2 further strengthens the case of the complainant and depicts that since his brick kiln was not operational after June 2015, therefore, it is highly probable and thus inspire confidence of the Court to believe that he defaulted even to the repayment of the coal purchased by him from the complainant, which is duly established from the evidence led by the complainant.

23. Thus, the appellant had no case challenging the financial capacity of the complainant to sell the coal amounting to Rs.5,87,100/-, on credit basis, out of which, the accused made part payment to the tune of Rs.1,07,000/- and an amount of Rs.4,80,100/- was outstanding against the accused, for the discharge of which part liability, the cheque in question has been issued. Thus, the accused has failed to make out a case proving that he had not purchase any coal from the complainant. He had no case that he had discharged the liability due to the complainant, covered by the cheque amount as well. Furthermore, the signatures of the appellant has not been denied on the cheque in question and the cheque has been issued from the account of the appellant. So, under the circumstances, in view of the

dictum laid down by Hon'ble Supreme Court in several decisions on this aspect coupled with the availability of the statutory presumption under Section 139 of Negotiable Instruments Act, in the considered opinion of this Court, learned trial Court was perfectly justified in coming to the conclusion that the case of the appellant is not probable and rightly believed the evidence of the complainant and convicted him for the offence under Section 138 of Negotiable Instruments Act and the cogent findings does not call for any interference. As such appellant-accused has rightly been convicted by the learned trial Magistrate Under Section 138 of the Act.”

13. A perusal of the afore-said observations made by learned trial Court as well as by the learned lower Appellate Court, would leave no manner of doubt that respondent No.2-complainant had successfully proved his case, whereas, the petitioner had failed to render any justifiable explanation for his alleged false implication in the case.

14. The judgment of conviction and order of sentence passed by the learned trial Court is well reasoned and based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Similarly, the judgment passed by the learned lower Appellate Court duly discusses the facts and evidence produced by the parties and contain reasons for affirming the judgment of conviction and order of sentence passed by the learned trial Court.

15. Accordingly, I do not find any illegality or infirmity in the impugned judgments.

16. Even otherwise, it is well settled law that the revisional jurisdiction of this Court is quite limited and this Court is to interfere only if there is any illegality or infirmity apparent on the face of the judgment/order passed by the Courts below or the same are perverse. It is

also well settled that merely because another view in the matter is possible, the same cannot be made a basis for interference with such judgments.

17. Accordingly, finding no merit in the present revision petition. The same is hereby dismissed.

18. Let the petitioner undergo the remaining sentence.

19. All pending application/s, if any, shall stand closed.

May 17th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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