

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

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**CRR-1204-2023 (O&M)
Date of Decision: 16.10.2023**

Sandal Singh

...Petitioner

Vs.

State of Haryana and another

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Shantanu Bansal, Advocate
for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

Mr. N.C. Kinra, Advocate, for the respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. Challenging the impugned judgment dated 28.03.2023 passed by the Court of Sessions Judge, Panchkula, whereby, the judgment of conviction dated 21.09.2022 and order of sentence dated 23.09.2022 sentencing the petitioner to undergo rigorous imprisonment for a period of one year and also to pay 1.5 times of the cheque amount, i.e. Rs. 5 lacs as compensation under Section 357(3) of the Criminal Procedure Code, for committing the offence under Section 138 of the Act passed by the Court of Judicial Magistrate 1st Class Panchkula, was ordered to be upheld; the petitioner/accused has preferred the present petition before this Court.

2. The petitioner/accused has preferred the present petition before this Court. As per the respondent No. 2/complainant, he was having friendly relations with the petitioner/accused. In May 2015, respondent No.2 alongwith Pawan Kumar and Ranjit Singh approached the petitioner for purchasing a property from Mamta. On their assurance, an agreement to sell was executed between Mamta as seller and the petitioner alongwith respondent No. 2 as purchasers on 06.06.2015. The property was allegedly owned by Mamta and the respondent No. 2 had the knowledge that Mamta was not the owner of the property in question and had no title over the property. However, with an intention to cheat the respondent No.2, the petitioner intentionally joined the respondent No.2 in the said agreement and received an amount of Rs. 21 lacs from respondent No. 2 as earnest money. When the respondent No. 2 came to know about the fraud, he requested the petitioner and others to cancel the agreement to sell dated 06.06.2015 and to refund the total amount of Rs.21 lacs to him. However, the petitioner and others refused to adhere to his request and the respondent No. 2 filed a complaint dated 04.09.2015 before the police. Ultimately, a compromise dated 08.10.2015 was arrived at between the parties and the present petitioner agreed to return the amount of Rs. 19 lacs to respondent No. 2 against the total amount of Rs. 21 lacs. Pawan Kumar agreed to return to Rs. 6 lacs in cash and Rs. 8 lacs by way of cheques and even the petitioner agreed to refund

an amount of Rs. 5 lacs through a cheque bearing No. 004726 dated 12.12.2015 pertaining to Axis Bank. On presentation, the cheque issued by the present petitioner got dishonoured on the ground of “account closed”. Again a second compromise was entered into between the petitioner and respondent No. 2 on 30.01.2016 and the petitioner again issued a fresh cheque bearing No. 318031 dated 25.05.2016 for a sum of Rs. 5 lacs, drawn on Punjab National Bank, Barwala, in lieu of the legal liability of the respondent No. 2. However, the said cheque was also dishonoured with the remarks “drawer’s signatures incomplete” . The petitioner again advised the respondent No. 2 to present the cheque and the cheque was accordingly re-presented on 09.08.2016 and was dishonoured on the ground that “drawer’s signature differs”. Ultimately, a legal notice was issued to the petitioner, however, he neither replied to the notice nor made the payment. Ultimately, the respondent No. 2 filed a criminal complaint against the petitioner before the Competent Court.

3. Learned counsel for the petitioner vehemently argued that the Courts below had completely misappreciated the evidence on record. He further submitted that ultimately, the agreement to sell was between Mamta Devi, Pawan Kumar as sellers and the petitioner/complainant as a buyer, which clearly implies that the petitioner was not a party to the transaction and the liability has been

wrongly fastened on him. Still further, the Courts had wrongly placed reliance on the compromise dated 08.10.20215 (Annexure C-3), which was allegedly executed between the petitioner, respondent No.2 and Pawan Kumar. Even, the second compromise dated 30.01.2016 (Ex.C-11) was not proved in accordance with law. Even though, the complainant examined 07 witnesses, but no witness was examined before the Courts below to prove the execution of the aforesaid compromise by the petitioner. Thus, there was no legally enforceable liability and the petitioner has been wrongly convicted by the Courts. Still further, the impugned judgment is based on misappreciation of evidence and law.

4. I have heard learned counsel for the parties and perused the record carefully.

5. In the present case, Dr. Gyanendra Sharma, respondent No. 2/complainant has appeared as CW1 and proved the facts, as narrated in the complaint. He clearly testified that the compromises were arrived at between the parties and the accused had undertaken to pay a sum of Rs. 5 lacs to him and the cheque was issued by the petitioner in discharge of his legal liability. He also deposed the facts with regard to the presentation and dishonor of the cheque as well as serving of the legal notice on the petitioner. The documents Ex.C1 to Ex.C26 were placed on record to prove his testimony. The facts

regarding settlement in police station in execution of the compromise were also corroborated by the testimony of CW6 SI Kamla Devi and CW7 Jagdeep Singh. Apart from that, the petitioner had wrongly alleged that he had issued the cheque in question, however, in his statement under Section 313 Cr.P.C. , he clearly stated that the police had pressurized him for issuance of cheque at the instance of respondent No. 2. Thus, the present petitioner had tacitly admitted the signatures on the cheque in question. The trial Court rightly observed that once the due execution of the cheque in question is proved in pursuance of the compromise arrived at between the parties, presumption under Sections 118 and 139 of the Act would arise in favour of respondent No. 2 and, thus, the presumption could be rebutted by adducing evidence by the petitioner. However, the petitioner utterly failed to prove on record any credible material or evidence, which could rebut the presumption in favour of the respondent No. 2.

6. Still further, from the agreement to sell Ex.C1, it is evident that the earnest money was given to some Mamta, who was not even owner of the land and a request was made to return the earnest money. When the request was not acceded to by Pawan Kumar and the petitioner, respondent No. 2 moved a complaint Ex.C2 to the Commissioner of Police, Panchkula and a compromise was

arrived at between the parties. In pursuance to the compromise, the cheque of Rs. 5 lacs was handed over by the petitioner to the respondent No. 2 and it was clearly mentioned in the compromise that in case the cheque was not encashed, action could be taken against them. Even, the petitioner had signed the said agreement and all the proceedings in this regard were duly proved on record by respondent No. 2 and the petitioner could not rebut the said evidence in any manner.

7. Still further, this Court finds no substance in the arguments raised by the learned counsel for the petitioner that the cheque was not issued in discharge of any legal liability and no offence under Section 138 of the Act was made out against the petitioner. In fact, the said submissions is without any basis. The respondent No. 2 moved a complaint dated 04.09.2015 Ex.C-2 to Commissioner of Police Panchkula and a compromise dated 08.10.2015 Ex.C-3 took place between the parties and as a consequence, the petitioner had handed over a cheque of Rs. 5 lacs to the respondent No. 2 and had undertaken that in case it was not encashed, the respondent No. 2 would be at liberty to initiate legal action against him. Still further, even the petitioner did not step into the witness box to rebut the presumption under Sections 118/139 of the Act.

8. Thus, the impugned judgment passed by the Courts below are based on correct appreciation of evidence and law and do not suffer from any material irregularity, illegality or perversity and impugned judgment dated 28.03.2023 passed by the Court of Sessions Judge, Panchkula, is ordered to be upheld.

9. Finding no merit in the present revision, the same is dismissed.

10. All pending applications, if any, are disposed off, accordingly.

16.10.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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