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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision :29.03.2023

CHAND KUMAR

... Petitioner

Versus

RAMESH KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arshdeep Singh Brar, Amicus Curiae
for the petitioner.

Mr. Ramesh Sharma, Advocate
for the respondent.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the judgment dated 25.10.2013 passed by the Additional Sessions Judge, Fazilka whereby in complaint case No.84-2/6.04.2011 under Section 138 of the Negotiable Instruments Act, the judgment of acquittal dated 13.09.2012 passed by the Evening Court Judge, Abohar has been affirmed.

2. As per the allegations contained in the complaint, it is submitted by the complainant that the accused in discharge of his legal liability towards the complainant issued a cheque bearing No.019732 dated 24.02.2011 for a sum of Rs.45,000/- drawn on State Bank of India, Main Branch, Abohar which on presentation was dishonoured by the banker of the accused on the ground of insufficient funds in the account of accused. The complainant approached the accused and requested him to make the payment of the cheque in question but to no avail effect.

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Consequently, he was served with a legal dated 26.02.2011 calling upon him to make the payment of the cheque amount as stipulated in the notice itself. However, he failed in doing so leading to the filing of the complaint.

3. Upon presentation of the complaint during the preliminary evidence Chand Kumar, complainant himself appeared in the witness box as CW-1 and reiterated the allegations as averred in the complaint and closed the preliminary evidence. Finding a *prima facie* case, vide order dated 16.07.2011, the accused was summoned to face trial for commission of the offence under Section 138 of the Negotiable Instruments Act.

4. During after notice evidence complainant-Chand Kumar himself stepped in the witness box as CW-1 and thereafter closed his after notice evidence.

5. The entire incriminating evidence, as has come on record, was put to the accused during his statement under Section 313 Cr.P.C. However, the accused pleaded innocence. However, no evidence was led by the accused in his defence.

6. Based on the evidence led, the accused/respondent came to be acquitted of the charge framed under Section 138 of the Negotiable Instruments Act vide judgment dated 13.09.2012.

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7. An appeal was preferred before the Court of Additional Sessions Judge, Fazilka which also came to be dismissed vide judgment dated 25.10.2013.

8. The aforementioned judgments are impugned in the present petition.

9. The learned Amicus Curiae for the petitioner right at the very outset submits that the present revision petition is not maintainable. He fairly concedes that the only remedy available with the complainant was to file an appeal against acquittal in terms of Section 378(4) Cr.P.C. He however on merits contends that the notice had been duly served upon the accused/respondent, the ingredients of the offence under Section 138 of the Negotiable Instruments Act had been duly proved in accordance with law and once the signatures on the cheque were accepted, the presumption under Section 118 of the Act arose that the cheque had been issued for the discharge of a legally enforceable debt in favour of the complainant and the said presumption remained un rebutted.

10. On the other hand, the learned counsel for the respondent/accused contends that the instant revision petition is not maintainable. The only remedy available with the petitioner was to have filed an appeal against the acquittal order passed by the Court of Evening Court Judge, Abohar dated 13.09.2012. On merits, it is his contention that the complainant had not been able to establish that he

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could have advanced a huge sum of Rs.45,000/- to an unknown person. There was no evidence as to from where the complainant had been able to arrange the funds to advance such a loan. Therefore, the presumption had been rebutted and the judgment of acquittal had rightly been passed.

11. I have heard the learned counsel for the parties.

12. Apparently, the accused/respondent was acquitted by the Court of Evening Court Judge, Abohar. The only remedy available with the complainant/petitioner was to have preferred an appeal against acquittal in terms of Section 378(4) Cr.P.C. Therefore, the present revision petition is not maintainable.

13. In view of the aforementioned facts, I find no merit in the present petition and the same is dismissed.

(JASJIT SINGH BEDI)
JUDGE

29.03.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No