

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-1939-2018(O&M)

Date of Decision:-01.05.2023

Kashmir Singh.

.....Petitioner.

Vs.

Satnam Singh.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Ms. Bhupinder Pal Kaur Brar, Advocate for the Petitioner.

None for the Respondent.

JASJIT SINGH BEDI, J.

The instant revision petition has preferred by the petitioner-accused against the judgment dated 26.03.2018 passed by the Additional Sessions Judge, Amritsar whereby the judgment of conviction and order of sentence both dated 30.01.2016 passed by Judicial Magistrate Ist Class, Amritsar has been upheld.

2. Succinctly, the case of the complainant/respondent (hereinafter known as the complainant) was that accused/petitioner (hereinafter known as the accused) Kashmir Singh was doing the business of sending persons to abroad on the basis of their studies, work permit or as permanent residents. The complainant came into contact with the accused through Sarbjit Singh of village Nag Kalan. When the complainant contacted the accused in the month of February 2010 for sending his son Inderjit Singh to any foreign country like USA, Canada or Australia, the accused assured the complainant in the presence of Harbhupinder Singh @ Bhinda Shah of Majitha for sending the complainant's son Inderjit Singh to Australia on the basis of a work permit. The accused demanded Rs.7.50 lacs as consideration for sending the complainant's son Inderjit Singh to Australia on a work permit and as such the complainant entrusted the accused with Rs.7.50 lacs along with the original passport of his (complainant's) son on the assurance of the

accused for a work permit visa for Inderjit Singh. Despite paying the whole consideration amount of Rs.7.50 lacs to the accused, he (accused) did not send Inderjit Singh to Australia on a work permit and did not return the hard earned money of the complainant. Even after the passage of nearly three years the accused could not send Inderjit Singh son of the complainant to Australia and did not return the amount of Rs.7.50 lacs. Lastly on 10.02.2013, when the complainant approached the accused with respectables in whose presence the accused had received Rs.7.50 lacs from complainant. The accused assured the complainant to return his money in two days and on 12.02.2013, the accused issued a cheque bearing no.480344 dated 12.02.2013 amounting to Rs.6,50,000/- drawn on State Bank of India, Lawrence Road, Amritsar, and promised to pay the remaining amount of Rs.1 lacs after one month along with the return of the original passport of his (complainant's) son. While issuing the said cheque, the accused had given an assurance to the complainant that the cheque was good for payment and would be encashed at the time of its presentation. On the assurance and undertaking of the accused, the complainant accepted the said cheque. He (complainant) presented the said cheque through his banker i.e. Punjab & Sind Bank, Dhab Wasti Ram, Amritsar, but the same was dishonoured with the remarks "Insufficient Funds and Investigate the A/c" vide memo dated 15.02.2013. Thereafter the complainant served the accused with a legal notice dated 06.03.2013 through Registered A.D. post but despite the service of the legal notice the accused failed to make the payment to the complainant because of which the complaint came to be filed under Section 138 of Negotiable Instruments Act, 1881 (for brevity 'N.I. Act').

3. After going through the preliminary evidence, the accused was summoned to face trial for the offence punishable under Section 138 NI Act vide order dated 16.04.2013.

4. The accused did not appear despite service and was declared a proclaimed person on 11.11.2013. Thereafter on his appearance he was released on bail.

5. The substance of the accusation under Section 138 of N.I. Act was stated to the accused. It was read over and explained to him in his own language. He pleaded not guilty and claimed trial.

6. The cross examination of the complainant Satnam Singh as CW-1 was conducted by the counsel for the accused on the basis of

preliminary evidence led on record by the complainant i.e. his examination in chief by way of affidavit Ex.CW-1/A and various documents proved on record by him i.e. Ex.C-1 to Ex.C-4 i.e. Original cheque Ex.C-1, bank memo Ex.C-2, copy of legal notice Ex.C-3 and postal receipt Ex.C-4. Thereafter, the complainant closed his evidence.

7. On completion of the complainant’s evidence, the statement of the accused was recorded under Section 313 Cr.PC. He denied every incriminating circumstance and claimed innocence. The accused submitted in his defence that the cheque in question had never been issued by him against any liability nor did he know the complainant or had any relation with him. The cheque in question had been misused and fabricated by the complainant only to cheat him. The cheque in question had not been filled by him in his own handwriting and the same was forged.

8. Based on the evidence lead the accused came to be convicted and sentenced as under:-

Name of Convict	Offence	Imprisonment
Kashmir Singh	U/S 138 Negotiable Instruments Act, 1881	Two Years RI

Petitioner-accused was also ordered to pay a compensation of Rs.8,00,000/- to the complainant and in default of payment of the same he was ordered to undergo RI for a period of three months.

7. Thereafter the petitioner/accused preferred an appeal against the judgment of conviction which came to be dismissed vide judgment dated 26.03.2018.

8. The aforementioned judgments are under challenge before this Court in the present petition.

9. The Counsel for the petitioner contends that the conviction has been recorded without considering the facts and law in its proper perspective. The cheque in question had been forged and, therefore, could not have been said to have been issued in discharge of a legally enforceable debt or liability. In fact there was no evidence of the existence of such a debt. There was no evidence of the financial capability of the complainant to be able to pay such a huge amount of money to the accused as has been sought to be canvassed by the complainant. Even the statement recorded under Section 313 Cr.PC has not been considered in its proper perspective.

He, therefore, contends that as the case against the petitioner had not been

established beyond reasonable doubt, he ought to be acquitted of the charges framed against him.

10. None has appeared for the respondent/complainant.
11. I have heard counsel for the petitioner and examined the record.
12. In the instant case, the petitioner has not denied his signatures on the cheque. His contention is that the contents of the body of the cheque had been filled up and therefore, the cheque in question was a forged one. It may be relevant to mention here that once the signatures on the cheque are admitted a rebuttable presumption arises that the said cheque has been issued in the discharge of a legally enforceable debt. The accused has led absolutely no evidence to rebut the said presumption either independently or by virtue of the cross examination of the complainant. In fact the petitioner has been unable to explain as to how the cheque has come into possession of the complainant and as to what was the enmity between the parties because of which he (petitioner) had been falsely implicated. It is also relevant to mention here that though the question of the financial capability of the complainant to pay the amount in question cannot be questioned once the issuance of cheque is established, however, in the instant case, the complainant has been able to establish his financial capacity by leading evidence to the effect that he was the owner of 60 acres of agricultural land. Further, during the course of the pendency of the appeal a compromise had been arrived at and in partial discharge of which the petitioner had even made payment of Rs.2,19,500/-. This fact also *prima facie* establishes the case against the petitioner even though the rest of the payment had not been made because of which the said compromise had collapsed and appeal of the petitioner came to be dismissed.
13. In view of the aforementioned discussion, I find no reason to interfere in the well reasoned orders of the Trial Court and the lower Appellate Court and therefore, the present petition is hereby **dismissed**.

(JASJIT SINGH BEDI)

JUDGE

May 01, 2023

Vinay

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