

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1934-2023 (O&M)
Date of Decision: 05.10.2023

Madan Lal

....Petitioner(s)

Versus

Jagbir and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Naveen Batra, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J.

1. The present is a revision petition filed impugning the judgment/order passed by the learned Judicial Magistrate First Class, Karnal dated 03/04.08.2016 as well as the order passed by the learned Additional Sessions Judge, Karnal dated 02.08.2023.

2. The learned Judicial Magistrate First Class, Karnal has convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 for one year and six months and further directed him to pay cheque amount of Rs. 10,00,000/- to the complainant as compensation for commission of offence. The aforesaid conviction and sentence have been affirmed by the learned Additional Sessions Judge, Karnal by dismissing the appeal. Assailing the aforesaid judgments, the present revision petition has been filed.

3. Learned ccounsel appearing on behalf of the petitioner

submitted that the complainant has not been able to prove his case before the learned trial Court since it was specifically pleaded by him that he had issued blank cheque in the name of one commission agent namely, M/s. Maan Trading Company, New Anaj Mandi, G.T. Road, Karnal. The petitioner and the respondent are farmers and the petitioner had kept the cheque with the aforesaid commission agent which was to be kept in a safe custody but he became dishonest and misused the cheque and gave it to the complainant without his consent and since it was a case of misuse of cheque, the petitioner was not liable under the provisions of Section 138 of the Negotiable Instruments Act. He submitted that the complainant was also not able to prove as to from where did he get the money at the time of allegedly giving money to the petitioner and, therefore, the impugned judgment is liable to be set aside.

4. I have heard the learned counsel for the petitioner.

5. The case of the petitioner is that he is a farmer and respondent /complainant is also a farmer and the complainant cultivates about 30 to 40 acres of land every year and is maintaining saving account with State Bank of Patiala. As per the allegations, the complainant had advanced a loan of Rs.9,00,000/- to the petitioner after withdrawing an amount of Rs. 5,65,000/- from his account and the remaining amount was lying at his house and the petitioner had issued a cheque of Rs. 10,00,000/- dated 29.05.2015 but when it was presented before the bank it was returned with the remarks that the funds are insufficient and thereafter, the complaint under Section 138 of the Negotiable Instruments Act was filed. The learned trial Court while dealing with the merits of the present complaint observed that the accused

has not denied or disputed his signatures on the cheque in dispute and, therefore, a presumption under Section 139 of the Act has arisen in favour of the complainant and against the accused. Apart from the above, the complainant also stated that the amount in question was given to the accused in the presence of one Rattan Singh. The complainant also stated that he withdrew Rs. 5,65,000/- from his account and rest of the money was at his home which was given to the accused. The aforesaid Rattan Singh has also been examined as CW3 who is stated to be an eye witness of the handing over the money. The learned trial Court further observed that the accused has failed to rebut the presumption especially in view of the fact that the signatures were not disputed and consequently, convicted the accused and sentenced him to one year and six months. On appeal being filed by the petitioner-accused, the learned Additional Sessions Judge also dealt with the merits of the case in detail and dismissed the appeal. After hearing the learned counsel for the petitioner and perusing the record, this Court is of the view that scope of revision is always restricted. Concurrent finding of facts have been recorded by both the Courts below. The signatures on the cheque have not been disputed. The amount of cheque was Rs. 10,00,000/- in lieu of the loan advanced of the aforesaid amount. The complainant was able to prove the source on the basis of the fact that he withdrew from his account an amount of Rs. 5,65,000/- whereas remaining amount was lying in his house. CW3 Rattan Singh in whose presence the money was given also supported the version of the complainant. Therefore, a statutory presumption arose in favour of the complainant which was required to be rebutted by the petitioner/accused. Since the burden of

rebuttal was on the petitioner/accused which was to be done by way of preponderance of probabilities but there is no iota of evidence to show as to why the statutory presumption could have been rebutted. Therefore, considering the aforesaid facts and circumstances, this Court is of the view that no illegality or perversity can be found in the impugned judgment and no ground is made out for interference in revisional jurisdiction of this Court.

6. Consequently, the present petition is dismissed.

05.10.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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