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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-33-2023 (O&M)
Date of Decision: 01.06.2023

Buta Singh

..... Petitioner

Versus

The Bathinda Central Co-op. Band Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Siddharth Gupta, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

Challenge in the present revision petition is to the judgment of conviction and order of sentence dated 08.02.2018, passed by Judicial Magistrate Ist Class, Bathinda, whereby the petitioner has been convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881. The petitioner further seeks setting aside of the judgment dated 22.10.2018, passed by learned Additional Sessions Judge, Bathinda, whereby his appeal against judgment of conviction and order of sentence was dismissed.

2. Mr. Naginder Singh Vashist, Advocate appears and files Memorandum of Appearance on behalf of the respondent in Court today, which is taken on record, subject to all just exceptions.

3. Custody certificate dated 01.06.2023 of the petitioner has been filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Briefly stated, a complaint was filed by respondent-complainant, wherein it is alleged that the petitioner/convict had availed a RCC limit of Rs.2,00,000/- from the complainant-Bank vide loan account No.022315131000154. It was alleged that the petitioner had failed to repay the loan amount regularly and committed default therein due to which the account of the petitioner became irregular. Thereafter, it has been alleged that the petitioner in discharge of his partial liability towards the complainant, issued a cheque bearing No.279542 dated 30.12.2014 of Rs.2,38,000/- in the name of complainant-Bank, however, upon presentation, the said cheque was dishonored vide memo dated 30.12.2014 with the remarks “*Funds Insufficient*”. Thereafter, legal notice dated 14.01.2015 was sent through the registered post calling upon the petitioner to make the payment within the prescribed period of 15 days. Since, the payment was not made by the petitioner, accordingly, the aforesaid complaint under Section 138 of the Negotiable Instruments Act was filed.

5. In order to substantiate its case, the respondent-complainant examined Harpreet Singh (power of attorney of the complainant-Bank) as CW-1 and tendered the following documents:

<i>Sr. No.</i>	<i>Documents</i>	<i>Exhibits</i>
1.	<i>Authority letter</i>	<i>CW-1</i>
2.	<i>Cheque</i>	<i>CW-2</i>
3.	<i>Returning memo</i>	<i>CW-3</i>
4.	<i>Copy of legal notice</i>	<i>CW-4</i>
5.	<i>Postal Receipt</i>	<i>CW-5</i>
6.	<i>Copy of loan application</i>	<i>CW-6</i>
7.	<i>Copy of sanction letter</i>	<i>CW-7</i>
8.	<i>Statement of account</i>	<i>CW-8 & CW-9</i>

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6. After closure of evidence of the complainant-Bank, statement of the petitioner was recorded under Section 313 of the Code of Criminal Procedure, wherein all the material incriminatory evidence/material was put to him, which he denied in toto and pleaded false implication. In defence, no evidence was produced.

7. After considering the material/evidence available on record, the learned trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and returned the following findings :-

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14. I have scrutinized the testimony of CWI Harpreet Singh Manager who has stated in his cross-examination that the accused did not borrow the amount in his presence and no transaction took place in his presence but at the same time he has clarified that he was not posted in the complainant bank when the accused borrowed the loan amount. The said version of witness does not put any effect on the veracity of his evidence or the case of the complainant as undisputedly the present case is based on the documents which have been proved on record as per law. As such there is no requirement that the witness examined by complainant must have personal knowledge of facts of the present case. CW1 Harpreet Singh has proved the entire record pertaining to the transaction in question and in his cross-examination stated that the amount of Rs.2,00,000/- was borrowed by the accused from the complainant bank. From the scrutiny of entire material available on file. I am of the considered opinion that CW1 Harpreet Singh has duly been authorized to appear and to depose in the present case and he has proved all the facts pertaining to version of complainant. Despite thorough cross-examination of

sald witness, nothing has come on record to show that cheque in question was not issued in discharge of legal liability of accused.

15. The another argument of learned defence counsel is that there is no detail of amount allegedly given to accused by complainant and no other particulars pertaining to said transaction have been given in the complaint and the complaint is entirely vague. I have perused the complaint to consider the said argument of learned defence counsel and found that complainant has submitted that accused availed RCC limit/loan of Rs.2,00,000/- from complainant bank vide loan account No.022315131000154 and executed necessary documents in favour of complainant but accused failed to repay the loan amount regularly and committed default. It has been further submitted that in discharge of his partial lawful liability accused issued cheque No.279542 dated 30.12.2014 for a sum of Rs.2,38,000/- in favour of complainant; Therefore, the complainant has given all the necessary particulars in his complaint with respect to the said money transaction. After scanning the entire record, I do not find any absurdity in the version of complaint. Rather, the witness of complainant has proved all the facts submitted by complainant in complaint.

16. The another contention of id defence counsel, is that the present complaint is not maintainable against accused as service of demand notice has not been proved on record. After going through the entire facts and evidence on file I do not find any force in the said contention of Id counsel. First of all, there is no plea of accused that he did not receive the demand notice from complainant pertaining to the cheque in question. Secondly, the complainant has proved on file the copy of

legal notice dt. 14.01.2015 Ex.C4 and postal receipt dt. 15.01.2015 Ex.C5. It is settled law that if the letter sent through registered post does not receive back within the period of 30 days, it will be presumed that it has been duly served.

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17. In view of the evidence produced in the present case and in the light of above mentioned authority of Hon'ble Apex Court, it is held that the legal notice was sent to accused properly and further that the accused was having the option to make the payment of the cheque amount within the 15 days from the date of service of notice. Therefore, said contention of Id. defence counsel sans merit.

18. The Id. Defence counsel has contended that the cheque in question was never given to complainant bank in discharge of any legal liability by accused, rather it was handed over to official of concerned complainant bank as security along with other blank signed cheques. Id. Counsel further contended that the accused has taken same plea in his statement recorded under section 313 Cr.PC. I have gone through the plea of accused wherein he has stated that cheque in question was given as security cheque which has been misused by complainant later on in order to extract more money from him and he has deposited all the amount to bank and nothing is due towards him. I go through the cross-examination of CWI Harpreet Singh again to consider the said contention of learned defence counsel. The suggestions have been given to CWI with regard to said plea of accused that cheque in question was given to complainant bank as security and the same has been misused. All these suggestions have been specifically denied by witness

CW1. It is admitted fact in the present case that the accused obtained the loan of the amount in question from the complainant but there is no document on file to show that accused had repaid the entire loan as claimed by him. There is also no material on file to explicate that cheque in question was blank signed cheque when handed over to official of complainant bank and the same has been misused by the latter to file the present complaint. The accused has pleaded his false implication in the present case but he has not given any reason for the officials of the complainant bank to file the present complaint against him falsely. If this contention of Ld. Counsel for the accused is considered, then the accused must have taken action against the officials of complainant bank for falsely implicating him in the present case but the accused has not brought on file any such complaint ever moved to higher officials of Bank or to police. So, mere bald allegation of accused in the absence of any supporting material, is not maintainable.

19. The Ld. Counsel has argued that complainant has not produced any record to show the liability of amount in question towards accused. I have gone through the evidence produced by complainant and found that CWI has proved on file account statement of accused Buta Singh as Ex.C8 for the period 01.04 2014 to 21.02.2015 which is reflecting the amount balance towards accused as Rs.2,39,063 on 21.02.2015 As mentioned above there is nothing on record to show that accused has repaid the said amount to complainant bank and therefore, the argument of learned defence counsel that complainant could not produce any record with regard to liability of accused for the amount in question, does not carry any force.

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21. After going through the referred judgment, it has become manifest that facts of the referred case are entirely different from that of Instant case. In the present case, no evidence has been brought on file to prove that cheque in question was obtained by complainant from accused as security cheque and nothing is pending towards him. Rather, the complainant has proved on file the ability of accused with regard to cheque in question by producing all relevant and material evidence, as such the findings of the cited case are not applicable in the case in hand.

22. Ld. Defence counsel has cross-examined the witness of complainant at length in the present case but he could not extract anything to put any dent upon the version of complainant or to establish the defence of accused that cheque in question was taken only as security from him. Therefore, the accused remained failed to prove his plea taken in defence through cross-examination of complainant CW1 or by leading any forcible or reliable evidence on record to discard the evidence proved on record by the complainant and further to rebut the presumptions arisen in favour of the complainant. To rebut the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the Court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.

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24. In a case under section 138 N.1, Act, for successfully rebutting the presumption under section 139

N.1. Act, it is incumbent on the part of accused, firstly, to raise a probable defence and then to establish the same on record. No doubt, for establishing the same, accused need not to examine himself as a defence witness, and he may rely upon the materials brought on record by the complainant himself. But before doing so, he must raise a probable defence but accused in instant case remained failed to produce any material to rebut the case of the complainant. Therefore, accused could not raise a probable defence version which is necessary to rebut the presumption under Section 139 of N.I. Act.

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25. As an up shoot of the above discussion, this court comes to the conclusion that it has been proved that there were money transactions between the complainant and accused. By leading cogent evidence, these facts have been proved by the complainant that accused had in discharge of his legally enforceable liability issued cheque in question Ex.C2 for a sum of Rs.2,38,000/- on his banker in favour of complainant and said cheque was dishonoured with the remarks" Funds insufficient" vide memo ExC3 and complainant had served demand notice Ex.C4 within stipulated time but accused had not made payments within stipulated period and complaint was filed well within period prescribed under the Act in the Court. As such accused Buta Singh is held guilty for commission of an offence punishable under Section 138 of the Act. Accused is convicted accordingly.

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8. Thus, vide judgment of conviction and order of sentence dated 08.02.2018, the Court of Judicial Magistrate Ist Class, Bathinda, convicted and sentenced the petitioner for the offence under Section 138 of the

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Negotiable Instruments Act to undergo rigorous imprisonment for a period of one year and six months and to pay compensation to the complainant-Bank to the tune of cheque amount i.e. total Rs.2,38,000/-, along with interest @ 9% per annum from the date of issuance of the cheque in question.

9. The appeal filed by the present petitioner came to be dismissed by the Court of Additional Sessions Judge, Bathinda, vide its judgment dated 22.10.2018 and the aforesaid judgment of conviction and order of sentence dated 08.02.2018 was upheld.

10. Hence, the petitioner has filed the present revision petition before this Court.

11. At the very outset, learned counsel for the petitioner stated that he does not propose to challenge the impugned judgment of conviction on merits, however, he prayed for modification of the order of sentence for the period already undergone by the petitioner.

12. In this regard, it has been submitted that the complaint was filed in the year 2015 and the petitioner has suffered the agony of trial/appeal/revision for all these years. It is contended that the petitioner has already undergone sentence of 1 year 2 months and 8 days out of the total awarded sentence of 1 year and 6 months, in the instant case.

13. On the other hand, learned State counsel has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, the fact with respect to the custody of the petitioner has not been disputed by the learned State counsel.

14. I have heard learned counsel for the parties and perused the entire material available on record, as well as judgment of the trial Court and lower Appellate Court.

15. Perusal of the judgments passed by the learned Courts below show that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Section 138 of the Negotiable Instruments Act. The Appellate Court has also rightly dismissed the appeal filed by petitioner. There is no illegality or perversity in the findings returned by both the Courts below, which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, the learned counsel for the petitioner has not assailed the judgments of conviction and has rather restricted his arguments qua the quantum of sentence only. Therefore, the conviction of the petitioner is upheld.

16. Vide separate order dated 08.02.2018 passed by the Judicial Magistrate Ist Class, Bathinda, the petitioner has been sentenced as under: -

Offence u/s	Imprisonment
138 of the Negotiable Instruments Act	Rigorous imprisonment for a period of one year and six months and to pay compensation to the complainant-Bank to the tune of cheque amount i.e. Rs.2,38,000/- along with interest @ 9% per annum from the date of issuance of cheque in question till today.

17. This Court in **CRR-1019-2022** titled as “**Harbans vs. State of U.T. Chandigarh**” decided on **06.01.2023**, while considering the issue of quantum of sentence, in the light of various judgments rendered by Hon’ble the Apex Court in “**Mohd. Giasuddin vs State of AP**” **AIR 1977 SC 1926**;

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“Deo Narain Mandal vs State of UP” 2004(7) SCC 257; “Shyam Narain vs State (NCT of Delhi)” 2013(7) SCC 77; “Kokaiyabai Yadav vs State of Chhattisgarh” 2017(13) SCC 449 and “Ravada Sasikala vs State of A.P.” AIR 2017 SC 1166, held that the criminal justice jurisprudence adopted in the country is not retributive but reformatory and corrective.

18. Considering the aforesaid position of law and also the facts and circumstances of this case, since the complaint was filed in 2015; the petitioner has suffered the agony of trial/appeal/revision for more than seven years; he has undergone actual sentence of one year two months and eight days out of the total sentence of imprisonment for one year and six months, as per custody certificate dated 01.06.2023; he is not involved in any other case, accordingly, this Court feels that the ends of justice would be met, if the sentence awarded to him is reduced to the period already undergone by him.

19. Accordingly, the present revision petition is partly allowed. The conviction of the petitioner is upheld. However, the sentence awarded vide order dated 08.02.2018 passed by the Court of Judicial Magistrate Ist Class, Bathinda and as upheld vide judgment dated 22.10.2018, passed by learned Additional Sessions Judge, Bathinda, is modified and the sentence of one year and six months rigorous imprisonment awarded to the petitioner is reduced to the period of sentence already undergone by him. However, compensation part of the sentence shall also prevail. The respondent-complainant shall be free to initiate proceedings for recovery of the compensation amount before the trial Court. The petitioner is in custody and shall be released, if not required in any other case.

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20. The present petition is accordingly disposed of in aforestated terms.
21. All pending application(s), if any, shall also stands closed, in view of the aforesaid order.

01.06.2023
Himani

(HARSH BUNGER)
JUDGE

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| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |