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2024:PHHC:164948



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

CRR-1770-2022 (O&M)

Date of Decision: **10.12.2024**

DILBAG SINGH

.....Petitioner

VERSUS

SOHAN SNGH AND ANOTHER

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Sunil Kumar, Advocate,
for the petitioner

Mr. R.S.Pathania, Advocate,
for respondent no.1.

Mr.Pardeep Bajaj, DAG, Punjab
for respondent no.2.

KULDEEP TIWARI, J.(Oral)

1. The instant statutory revision petition, is directed against the judgment dated 05.04.2019, passed by the learned Judicial Magistrate Ist Class, Dasuya (hereinafter referred to as 'the learned trial court concerned'), wherethrough, the present petitioner has been convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, in a private complaint bearing No.NACT-36-2016, dated 15.03.2016, preferred by respondent no.1/complainant-Sohan Singh, and sentenced him to undergo rigorous

imprisonment for one year, with fine of Rs.2,000/-, in default thereof, to further undergo imprisonment for 01 month.

2. In addition, the petitioner challenges the judgment dated 04.08.2022, passed by the learned Additional Sessions Judge, Hoshiarpur, (hereinafter referred to as 'the learned appellate court concerned'), wherethrough, the appeal against the judgement of conviction and order of sentence (*supra*), as preferred by the present petitioner, was dismissed.

3. Shorn off, unnecessary details, respondent no.1, had filed a complaint against the present petitioner under the provisions of Section 138 of the Negotiable Instruments Act, 1881. The complainant/respondent no.1, is assisting as a holder of cheque bearing No.103863, dated 29.10.2015, for an amount of Rs.5 lakhs, which was issued by the petitioner/accused in order to discharge his financial liability, but on presentation of the same, it was dishonoured. Thereupon, the respondent no.1/complainant issued a legal notice upon the present petitioner/accused, but the payment due, was not made. Therefore, the respondent no.1/complainant, was constrained to file the instant complaint.

4. The petitioner was summoned by the learned trial court concerned, to face the trial. In pursuance of his appearance before the learned trial court concerned, notice of substance of accusation under Section 138 of the Negotiable Instruments Act, 1881, was served upon him. The respondent no.1/complainant in order to substantiate the allegations in the complaint stepped into the witness box and also tendered some documents, and closed his evidence. Thereafter, the

statement of present petitioner under Section 313 Cr.P.C. was recorded, in which all the incriminating circumstances, as brought on record by the respondent no.1/complainant, was put forth to the petitioner/accused. The petitioner/accused, however, denied all such allegations, and while pleading false implication, claimed to be innocent. In his defence, he stepped into the witness box as DW1.

5. The learned trial court concerned, after considering the sufficient material on record, held the petitioner guilty for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, vide impugned judgment dated 05.04.2019, which caused grievance to the present petitioner, and propelled him to file a statutory appeal, which was also dismissed vide judgment dated 04.08.2022, by the learned appellate court concerned, and the same is now under challenge before this court.

6. Learned counsel for the petitioner submits that respondent no.1/complainant, failed to prove that he had any resource to pay Rs.5.00 lakhs in cash to the present petitioner.

7. He further submits that the cheque in question was, in fact, the security cheque, therefore, there is no legal enforceable liability, hence, the ingredient of Section 138 of the Negotiable Instruments Act, 1881, are totally absent.

8. In order to substantiate his submissions, he draws attention of this Court towards the cross-examination of CW1-Sohan Singh (complainant), wherein, the complainant/respondent no.1 admitted that he cannot produce any receipt of income of the year 2015 in the court, to

substantiate his capacity to pay Rs.5 lakhs in cash to the present petitioner/accused.

9. He further draws attention of this Court towards the suggestions put by the learned counsel concerned to the effect that, infact one other case is also pending regarding money transaction, given on interest by the complainant/respondent no.1, and in that case as well, there is no receipt with the complainant in regard to payment of Rs.5 lakhs to the present petitioner.

10. He also submits that the petitioner stepped into the witness box as DW1, wherein, he categorically deposed that he has only received Rs.1 lakhs from the complainant/respondent no.1, and that too the complainant had paid Rs.90,000/-, after deducting 10%, and the petitioner had returned the entire amount in installment with interest to the complainant.

11. On the other hand, learned counsel for respondent no.1, denied all the averments made in the petition.

12. This Court has considered the submissions made by learned counsel for the petitioner. All the above submission were recorded only for the purpose of being rejected.

13. The issues which have been raised, are in fact, disputed question of facts. Both the courts below have held that the cheque in question was issued in discharge of legally enforceable debt, after appreciation of evidence, as adduced by both the parties concerned. Therefore, the scope of the revisional court is very limited.

14. However, this Court has also examined the submission, as made by learned counsel for the petitioner. It is apt to note that the petitioner/accused himself made a specific suggestion to the complainant, the relevant thereof extracted hereinafter:

“...It is wrong that I gave money on interest....”

“....It is also incorrect that I had received a cheque as security....”

15. These two suggestions are, in fact, self suffered sword wound, as the above exrtracted suggestions clearly suggests that the petitioner himself admitted the issuance of cheque, though he tried to make out a case that the cheque was given as a security, however, he was unable to prove anything by adducing any cogent evidence, except stepping himself into the witness box.

16. Except the above, no other submission were made by the learned counsel for the petitioner.

17. In view of the above, this Court does not find any error or illegality in impugned judgments of convictions (*supra*) and order of sentence (*supra*), passed by the Courts below, which requires interference by this Court.

18. Consequently, the instant petition is, hereby, **dismissed**.

19. All pending application(s), if any, also stand disposed of accordingly.

December 10, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No