

**CRR-2460-2023(O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-2460-2023(O&M)****Date of Decision : May 02, 2024**

Chander Mohan Monga

.....Petitioner

VERSUS

Iqbal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARIPresent : Mr. Lipul Gupta, Advocate
for the petitioner.

Mr. Pardeep Bajaj, DAG, Punjab.

Mr. Piyush Setia, Advocate
for the respondent.**KULDEEP TIWARI, J.**

1. Through the instant petition, challenge is thrown to the judgment of conviction and order of sentence dated 1.12.2017 passed by the learned trial Court concerned, whereby, the petitioner was convicted for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.4,000/- and in default of payment of fine, he shall further undergo simple imprisonment for a period of three months. The statutory appeal preferred by the petitioner against the judgment of conviction and order of sentence (supra), was also dismissed by the learned Sessions Judge, Fazilka vide judgment dated 7.11.2022.

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2. Learned counsel for the petitioner submits that both the Courts below, have not appreciated the evidence in its right perspective, therefore, the judgments passed by the Courts below need interference. He further submits that the petitioner has examined Anil Kumar Gupta, Handwriting and Finger Expert, as DW1, which proved on record beyond reasonable doubt through his report as Ex.DW1/B and photo charts as Ex.DW-1/C to Ex.DW-1/L that there is a dispute in signatures mark, whereas, the other documentary evidence, which was produced on record, was not even considered by the learned trial Court concerned, while recording the judgment of conviction and order of sentence (supra), therefore, the impugned judgment is purely based upon misreading of facts and, therefore, being perverse needs to be set-aside.

3. Before this Court considered the arguments raised by the learned counsel for the petitioner, let us have a glance to the brief facts of the matter.

4. The respondent-complainant has filed the instant complaint on 12.3.2014 against the present petitioner and his wife, with the allegations that he has paid a total amount of Rs.5 lacs, to both the accused, from dated 16.4.2013 to 29.11.2013 and the accused invested this amount in the business of sale and purchase of seeds. It is further alleged that though both the accused persons promised to return the amount in the month of December 2013, after getting a loan on the CC limit from the bank, however, they failed to return the said amount and upon persuasion by the complainant, both the accused handed over a

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cheque bearing No.160668 dated 28.1.2014, amounting to Rs.5 lacs drawn on Allahabad Bank, Branch Abohar, under their joint account No.50014719085 and stated that there is sufficient balance in their account and the cheque will be encashed on its presentation. The petitioner-accused signed the cheque in the presence of the complainant. Thereafter the complainant presented the said cheque in his bank i.e. HDFC Bank, Abohar, for encashment, which was returned unpaid with memo dated 29.1.2014, with the remarks "Funds Insufficient". Thereupon, the complainant served a statutory legal notice dated 11.2.2014, to which the petitioner never replied, nor returned the cheque amount, which propelled the complainant to institute a complaint under Section 138 of the Negotiable Instruments Act, against the present petitioner-accused.

5. The learned trial Court concerned, on the basis of preliminary evidence led by the complainant proceeded to summon only the present petitioner vide summoning order dated 12.3.2014. The petitioner had caused appearance and thereupon, both the parties led evidence. The petitioner also led evidence in his defence and in his statement under Section 313 Cr.P.C., he refuted all the allegations and submitted that there is no legal liability, or legal debt towards him. He further stated that six blank signed cheques were taken from him by Balbir Singh (brother-in-law of the complainant), as security purpose and lateron, Balbir Singh handed over the said cheques to the complainant and the complainant filed a false complaint against him and misused his

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blank cheques in connivance with Balbir Singh. He further took the defence that no amount whatsoever, has been paid by the complainant and the cheque was never handed over to the complainant.

6. After hearing both the parties concerned, the learned trial Court has concluded that the allegations as levelled against the petitioner have been duly proved by the complainant beyond reasonable doubt and passed the verdict of conviction and order of sentence (supra).

7. As already mentioned above, the statutory appeal preferred by the petitioner was also dismissed.

8. This Court has also examined the judgments passed by both the Courts below and is of the view that there is no illegality or any perversity in those judgments, requiring this Court to interfere into the well reasoned judgments. The submission made by the learned counsel for the petitioner that the defence evidence has not been considered by the learned trial Court concerned, as well as by the first Appellate Court is infact incorrect, as both the Courts below have considered the statement of DW1 Anil Kumar Gupta, Handwriting and Fingerprint Expert and rejected his statement on the ground that since the petitioner-accused has not denied his signatures over the cheque in question and it was not his case from the very beginning, that his signatures have been forged on the cheque, therefore, no credence can be assigned to the statement of the Handwriting and Fingerprint Expert.

9. This Court has also examined the statement of the accused under Section 313 Cr.P.C., as recorded by the learned trial Court

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concerned, wherein, the defence of the petitioner is that the cheque which he has given as a security, to one Balbir Singh has been misused by the respondent-complainant, as Balbir Singh has handed over the said cheque to the complainant being his relative and who has filed the instant petition, therefore, the petitioner cannot be allowed to take a contradictory stand and moreover both the Courts below have rightly rejected the defence evidence so adduced by the petitioner-accused. The petitioner has failed to join Balbir Singh as a witness in order to substantiate his defence that the cheque was handed over for security purpose to him, therefore, the material witness was not examined by the petitioner in order to discharge his onus, which after proving the essential ingredients by the complainant, shift upon him. All the ingredients, which require to attract the provisions of Section 138 of the Negotiable Instruments Act, have been fully established and proved by the complainant-respondent beyond reasonable doubt and this Court finds no error or any perversity in the judgments passed by the learned Courts below, therefore, the instant petition is ordered to be **dismissed**.

(KULDEEP TIWARI)**JUDGE****May 02, 2024**

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