

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-2875-2023 (O&M)
Date of Decision:-19.3.2024

Balram Panday ... Petitioner
Versus
State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Nakul Sharma, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. Petitioner - Balram Panday assails judgment dated 17.11.2023 passed by learned Additional Sessions Judge, Fatehgarh Sahib, whereby an appeal filed by the petitioner challenging his conviction recorded by learned Sub Divisional Judicial Magistrate, Amloh vide judgment dated 1.7.2019 for offence under Section 138 of Negotiable Instruments Act (hereinafter referred to as '*the Act*'), has been dismissed.
2. Respondent No.2/complainant – Jugal Kishore had instituted complaint dated 30.5.2016 (Annexure P-1) under Section 138 of the Act against the petitioner alleging therein that he had advanced a loan of Rs.3 lakhs to the accused by issuing cheque No.4531026 dated 22.1.2009 from his bank account maintained with Union Bank of India, Branch Mandi Gobindgarh, which was duly encashed. The accused had agreed to pay back the same as and when demanded alongwith interest @ 18% per annum. On 6.11.2013, the

accused issued a cheque No.706838 dated 6.11.2013 for a part payment of Rs.50,000/- only. Subsequently, the accused issued another cheque i.e. cheque No.165632 dated 20.4.2016 for an amount of Rs.7 lakhs to the complainant from his bank account maintained with HDFC Bank, Branch Khanna, but upon presentation of the same, it was dishonoured. The complainant in order to substantiate the allegations himself stepped into the witness-box and also led documentary evidence. Learned Sub Divisional Judicial Magistrate, Amloh, upon marshalling the evidence on record held the accused/petitioner guilty of having committed offence under Section 138 of the Act and accordingly sentenced him to undergo rigorous imprisonment for 2 years and also awarded compensation to the petitioner to the tune of Rs.7 lakhs vide judgment dated 1.7.2019. Aggrieved by the same, the petitioner/accused filed an appeal before the Court of learned Additional Sessions Judge, Fatehgarh Sahib, but the same was also dismissed vide judgment dated 17.11.2023, which has been assailed by way of filing the instant petition.

3. Learned counsel for the petitioner vehemently argued that the complainant did not lead any convincing and cogent evidence as regards the advancement of loan to the petitioner and that although the complainant had placed on record a copy of an entry from his own bank account showing some transaction of Rs.3 lakhs, but it cannot be said with certainty that the said amount was the same amount, which had allegedly been given by the accused to the complainant. Learned counsel further submitted that the complaint otherwise ought to have been dismissed for the reason that the complainant had not chosen to array the company/firm as an accused, which

had issued the cheque in question. It has been submitted that while the cheque in question had been issued from the bank account of his firm i.e. 'M/s J.K. Industries', the complainant has not chosen to implead the said firm as an accused though in terms of provisions of Section 141 of the Act, the said firm would also be required to be arrayed as an accused, so as to saddle its proprietor/directors with responsibility.

4. This Court has considered the aforesaid submissions.
5. As far as the contention of the petitioner regarding the complainant not having led sufficient evidence before the Trial Court, learned counsel for the petitioner has today referred to a copy of the bank account statement produced before the Trial Court as Exhibit C-1. A photocopy of the same has been furnished to this Court, which is taken on record.
6. There is an entry dated 27.1.2009 with respect to cheque No.453126 in respect of withdrawal of an amount of Rs.3 lakhs. The complainant in his examination-in-chief categorically deposed as regards his having advanced a loan of Rs.3 lakhs to the accused by way of the cheque in question. The relevant in para No.2 of the affidavit of CW-1 tendered towards examination-in-chief, as has been annexed as Annexure P-2 with the present petition, is extracted hereinunder:

“That the accused with a view to meet his financial needs, requested the complainant to advance a loan of Rs.3,00,000/- (Rs. Three Lac Only) and conceding his requests, the complainant advanced the accused, a sum of Rs.3,00,000/- (Rs. Three Lac Only) through Cheque No.4531026 Dated 22.01.2009 of Union Bank of India, Mandi Gobindgarh from

the account of the complainant and the same was duly encashed by you from the account of the complainant.”

7. The aforesaid deposition shows that the complainant in unambiguous terms deposed regarding the amount in question having been advanced to the accused by way of the aforesaid cheque. In the same very examination-in-chief, the copy of the statement of bank account of the complainant was exhibited as Ex.C-1. A perusal of the cross-examination of the complainant conducted on behalf of the accused, which is a fairly lengthy cross-examination and has been annexed as Annexure P-2 with the present petition, would show that not even a single word had been put to the complainant as regards the aforesaid cheque number. The accused did not confront the complainant with regard to the aforesaid entry dated 27.1.2009 pertaining to cheque No.4531026 dated 22.1.2009 for an amount of Rs.3 lakhs.
8. Under these circumstances, this Court has no hesitation in holding that the complainant has led sufficient evidence to establish that he had advanced a loan of Rs.3 lakhs to the accused. Consequently, the accused having issued a cheque towards part payment of the said amount and the same having been dishonoured, it can safely be said that the cheque in question, which has been dishonoured, had been issued for discharge of legally enforceable liability.
9. As regards, the contention of the petitioner regarding the complainant not having arrayed the firm as a party i.e. M/s J.K. Industries, this Court finds that neither it is the case of the petitioner that the amount in question had been advanced as loan to the firm of the petitioner nor the cross-examination of the complainant suggest any such stand of the petitioner. Still further the firm in question is a sole proprietorship firm of the accused and, as such, it

cannot be said that the petitioner would not be responsible for the affairs of the said firm. The Trial Court as well as the Lower Appellate Court have taken into account all the relevant aspects on the basis of the evidence led by the parties and have correctly reached at the conclusion as regards the guilt of the petitioner. This Court does not find any valid ground to interfere with the findings as recorded by the Trial Court and as affirmed by the Lower Appellate Court. Finding no merit in the present petition and the same is hereby dismissed.

19.3.2024

Pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No