2025:PHHC:111651

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

**CRR 307 of 2025 (O&M)
Date of Decision: 13.08.2025**

Sushant Sood ….Petitioner

Vs.

State of U.T. Chandigarh and another …Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present :- Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Samir Rathaur, Addl. P.P. for U.T., Chandigarh.

Mr. Karajveer Singh, Advocate and
Mr. Aditya Sharda, Advocate
for respondent No. 2/complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the impugned judgment and order dated 24.01.2020 passed by the court of Judicial Magistrate Class Chandigarh, whereby the petitioner has been convicted for commission of offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as **'the Act')** and was sentenced to undergo RI for a period of two years and to pay compensation double to the cheque amount i.e Rs.32,00,000/-. The petitioner has also challenged the impugned judgment dated

12.07.2024 passed by the Court of Additional Sessions Judge, Chandigarh, whereby, the appeal filed by the petitioner was ordered to be dismissed.

2. The complaint was initially filed by Vineet Vermani, respondent No.2/complainant before the Judicial Magistrate Ist Class, Chandigarh on 24.10.2017 by alleging that he and the petitioner/accused were childhood friends, since their fathers were also having family relations for the last 20/22 years. The respondent No.2 used to treat the father of the petitioner next to his own father, who had left for heavenly abode in June 2001. In June 2013, the petitioner and his father contacted him for financial help in order to meet some financial crisis. They told respondent No.2 that father of petitioner had purchased many properties in Dhakoli (Zirakpur) in the name of his trusted friend Deepak Rai. However, Deepak Rai had gone missing and his family members involved his father in false litigation. Taking into consideration their financial hardship, the respondent No.2 agreed to help the petitioner and on 04.06.2013, the respondent No.2 gave a sum of Rs.2,00,000/- in cash, on 10.06.2013, he gave a sum of Rs.4,00,000/- through cheque, on 20.06.2013, an amount of Rs.5,00,000/- in cash and on 16.07.2013, an amount of Rs.3,00,000/- in cash i.e. total Rs.14,00,000/- were given to the petitioner. In the month of March 2014, the petitioner and his father again contacted the respondent No.2 and requested for giving another sum of Rs.10,00,000/- which was required for settlement of some dispute. The

respondent No.2 again paid a sum of Rs.1,00,000/- on 03.04.2014 in cash, Rs.2,00,000/- on 30.09.2014 in cash, Rs.1,50,000/- on 26.11.2014 in cash, Rs.50,000/- on 16.12.2014 in cash, Rs.2,00,000/- on 05.05.2015 in cash and Rs.2,00,000/- on 29.07.2015 through cheque. After two years, the respondent No.2 asked the petitioner to return his money, but he kept lingering on the matter on the one pretext or the other till June 2017. On 06.06.2017, complainant along with his friend Harinder Goyal visited the office of the petitioner and at his instance, the petitioner gave an undertaking to pay a sum of Rs.23,00,000/- and handed over four cheques i.e cheque No.016475, dated 05.08.2017 for an amount of Rs.3,00,000/- cheque No.735136 dated 21.08.2017 for an amount of Rs.4,00,000/-, cheque No.082948 dated 21.08.2017 for an amount of Rs.1,00,000/- and cheque No.082949 dated 21.08.2017 for an amount of Rs.15,00,000/- respectively in order to discharge his liability. He further assured the respondent No.2 that on presentation the cheque would be honoured and the respondent No.2 presented cheque No.016475 for encashment, but the same was returned with the remarks "Funds Insufficient". The respondent No.2 intimated the petitioner, he assured to present all cheques on 21.08.2017. On his assurance, the respondent No.2 presented all cheques for encashment, but the same were returned vide the memos dated 24.08.2017, 21.08.2017,24.08.2017 and 22.08.2017 with the remarks "Funds Insufficient". The respondent No.2 issued legal notice dated 04.09.2017 and 09.09.2017, but still the petitioner did not make the payment. Ultimately, the respondent had to filed the complaint before the Judicial Magistrate Ist Class, Chandigarh.

3. After the filing of the complaint, the preliminary evidence was led by respondent No.2 and the petitioner was summoned to face trial under Section 138 of the Act.

4. After the appearance of the petitioner, notice of accusation was served upon him to which he pleaded not guilty and claimed trial.

5. In his evidence, respondent No.2 Vineet Vermani appeared as CW-1 in the witness box and tendered his duly sworn affidavit Ex.CA. He further tendered into evidence copies of SMS and whattsapp chat as Ex.C1 and Ex.C2, undertaking Ex.C3, copy of cheques as Ex.C9 and Ex.C11, memos of return as Ex.C5, Ex.C6, Ex.C8, Ex.C10,Ex.C12, legal notice as Ex.C13 and Ex.C18, registered post receipts as Ex.C14, Ex.C15, Ex.C19 and Ex.C20 and envelopes Ex.C16, Ex.C17, Ex.C21, tracking reports Ex.C-16A, Ex.C-17A, Ex.C21-A and Ex.C-22-A, emails Ex.C23 and Ex.C24 and screenshot Ex.C25. After producing the evidence, the respondent No.2 closed his evidence.

6. After completion of evidence of respondent No.2, the statement of petitioner was recorded under Section 313 Cr.P.C, wherein, the entire evidence led by the respondent No.2 was put to him and was asked to offer his explanation. He pleaded innocence and claimed that he had been falsely framed in the present case. He clearly

stated that no legal notice was served on him and the legal notice was sent on wrong address intentionally. He stated that he has no legal liability as alleged by respondent No.2 in his complaint or his affidavit. Rather the respondent No.2 had received an amount of Rs.4,50,000/- in cash from him in the month of April 2018. Mark “DA” was the draft made by him in favour of the respondent No.2, but the respondent refused to accept the payment through draft. Thereafter, on the asking of respondent No.2, he made the payment of Rs.4,50,000/- in cash to the respondent No.2. The respondent No.2 had misused the blank cheques give to him as security and he intentionally did not return the same to him. He even moved a complaint against him to SHO Police Station Sector-34, Chandigarh, but the respondent No.2 made a statement that the matter was pending before the Court and he would accept the decision of the Court and the complaint was consigned. He further stated that he had only taken a loan of Rs.4,50,000/- from respondent No.2, which has already been returned to him and the respondent No.2 is blackmailing him to extort more money.

7. The petitioner did not produce any witness in defence and the evidence of the petitioner was closed by order.

8. Learned counsel for the petitioner has vehemently argued that both the Courts had completely overlooked the fact that cheques Ex.C-9 and C-11 dated 21.08.2017 and dated 21.08.2017, bearing Nos.

082948 and 082949, respectively were not filled by the present petitioner. Even, CW-1, Vineet Vermani, respondent No.2 also admitted that he did not know whether the handwriting on Ex.C-9 and Ex.C-11 was different. This clearly shows that the cheques were misused by respondent No.2. Apart from that, even respondent No.2 while appearing as CW-1 admitted that transactions in cash as well as transactions by way of cheque had not been shown by respondent No.2 in his income tax returns. Thus, it is apparent that the source of alleged demand had not been proved and there is no evidence to show that various amounts were paid to the petitioner. Even, learned counsel referred to the statement of the petitioner, which was recorded under Section 313 Cr.P.C to support his argument.

9. Learned counsel for the petitioner further argued that both the Courts had given undue importance to Ex.C3 i.e. the alleged undertaking given by the petitioner. The stamp paper for the said undertaking was purchased by Amit Kumar and his friend Harinder Goyal was present at the execution of the Ex. C-3. However, both the witnesses were not examined by the respondent No.2 and the case set up by him is highly doubtful. Apart from that, the petitioner had never received legal notice Ex.C-13 and Ex.C.18 and this fact has been admitted by respondent No.2 also. The respondent No.2 also admitted that the present petitioner had shifted from High Land Enclave, Dhakoli since last one and half/two years and had shifted to TDI, SAS Nagar, Mohali. Thus, the ingredients of the offence under section 138

of the Act were not fulfilled in the present case. Learned counsel for the petitioner further argued that the presumption under Section 138 of the Act rebutted by the petitioner from the evidence led by the complainant himself. The cheques in question were issued as a security and have been misused by respondent No.2. Further, the statement Ex.C-3 was not proved in accordance with law and is forged and fabricated evidence. Further, cheques Ex.C-9 and Ex.C-11, complainant had not identified the signatures of the petitioner. Thus, both the Courts have not considered the evidence led by the respondent No.2 and the petitioner was liable to be acquitted by this Court.

10. On the other hand learned counsel appearing on behalf of the respondent No.2 submitted that both the Courts have duly examined the submissions made by the petitioner before this Court and all submissions have been rejected by the Courts.

11. I have heard learned counsel for the parties and perused the record carefully.

12. The main contention raised by learned counsel for the petitioner is that the cheques Ex.C-9 and Ex. C-11 were not filled by the petitioner and this raises a suspicion about the version of the complainant. However, it is an admitted fact that the cheques in question were duly signed by the present petitioner and when the signatures are admitted, the drawer of the cheque cannot escape the

liability under Section 138 of the Act. Once the issuance of the cheque as well as his signatures have been accepted by the accused, the statutory presumption under Section 139 of the Act would operate. Even, it is immaterial as to whether the cheque was filled by the drawer or any other person other than the drawer. If, the cheque is otherwise valid, the penal provisions of Section 138 of the Act would be attracted. Still further, learned counsel has submitted that CW1 had admitted that certain transactions were acknowledged also and transactions by way of cheque had not been shown by respondent No. 2 in his income tax returns. In fact, mere non filing of the income tax return or non mentioning of the transactions in income tax returns would not automatically dislodge the case of the complainant in a case under Section 138 of the Act. Non payment of income tax is a matter between income tax authorities and the assessee and non filing of income tax return does not mean that the complainant had no source of income. In fact, in a criminal trial under Section 138 of the Act, the Court has to examine the essential ingredients of the offence and cannot examine other statutory provisions.

13. Still further, learned counsel for the petitioner has argued that the undertaking Ex.C3 could not be proved on record before the trial Court in accordance with law and the petitioner deserves to be acquitted on this ground. In fact, the there is no force in the said statement as Ex.C3 was apparently signed by the present petitioner. Even, a fact which was admitted by the accused, need not to be proved

by the complainant during the course of the trial. In fact, the petitioner himself did not lead any evidence to show that Ex.C3 was not signed by him. Moreover, there was sufficient evidence to show that the legal notice was duly served on the present petitioner. Apart from that, the present petitioner always had the liberty to offer amounts equal to cheques in dispute on the date of first hearing before the trial Court and now he cannot be permitted to take advantage of technicalities of law. Even otherwise, this Court has carefully perused the findings recorded by both the Courts and find no infirmity in the impugned judgment.

14. Finding no merits, the present petition is ordered to be dismissed.

15. All pending applications, if any, are disposed off, accordingly.

13.08.2025 **(N. S. SHEKHAWAT)**
hitesh/amit rana **JUDGE**