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(203)

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

**CRR-3153-2010 (O&M)
Date of Decision: 15.01.2025**

HARBANS LAL**... Petitioner****Versus****STATE OF PUNJAB & ANOTHER****...Respondents****CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Vaneet Thakur, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

Mr. B.D. Sharma, Advocate
for respondent No.2/complainant.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the judgment dated 17.11.2010 passed by the Additional Sessions Judge, Jalandhar, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 13.12.2007 passed by Judicial Magistrate, 1st Class, Phillaur, has been dismissed.

2. The complaint in the present case came to be registered on 21.09.2004. The judgment of conviction was passed on 13.12.2007 by the Judicial Magistrate, 1st Class, Phillaur. The appeal filed against the order of conviction was dismissed on 17.11.2010 by the Additional Sessions Judge, Jalandhar. The instant revision petition was filed on 27.11.2010 and has

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come up for final hearing now i.e. after a period of more than 20 ½ years from the date of registration of the complaint.

3. The brief facts of the case are that respondent/complainant Gurmail Singh filed a complaint under Section 138 of the Negotiable Instrument Act (in short 'the Act') read with section 406 and 420 IPC, against accused/petitioner Harbans Lal on the allegations that accused/petitioner had purchased 12 buffaloes from him in year 2004 for a sum of Rs.3,30,000/-. He made payment of Rs.10,000/- only. He issued Cheque No.0452797 dated 07.05.2004 for Rs.3,20,000/- in order to discharge his aforesaid liability from his Account No.4492/2 of Kapurthala Central Co-Operative Bank Ltd., Branch Phagwara. The complainant presented the said cheque for clearance through his banker Punjab National Bank, Goraya (Atta). The said cheque was returned unpaid on 05.08.2004 along with memo dated 04.08.2004 of the bank with the remarks that the accused was having insufficient funds in his account.

The complainant issued mandatory notice dated 16.08.2004 vide postal receipt dated 17.08.2004 within 15 days of receipt of intimation of dishonor of said cheque, calling upon the accused/petitioner to make payment of the same but he refused to accept the notice, meaning thereby that said notice was duly served upon him. Therefore, the complaint had been filed.

4. After recording preliminary evidence, the accused was summoned to face trial. On his appearance, notice of accusation under

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Section 138 of the Act was served upon the accused, to which he pleaded not guilty and claimed trial.

5. During trial, Gurmail Singh complainant/respondent himself stepped into the witness box as CW1 and recounted all the allegations against the accused on oath. He proved various documents viz cheque Ex.C2, bank memo Ex.C3, copy of legal notice Ex.C4, postal receipt Ex.C5 and postal envelope Ex.C7.

6. After closure of evidence of the complainant, statement of accused under Section 313 Cr.P.C was recorded. Version unfolded by the accused was that he never purchased buffaloes from the complainant/respondent No.2 nor issued the cheque in dispute. One Pawan Kumar had borrowed Rs.20,000/- from the complainant and as security he had given four blank cheques. The complainant had misused the said cheque.

In defence, the accused examined DW1 Dalbir Singh, who deposed that the complainant was a partner of Khakh Finance Co., G.T.Road, Phagwara. He was employed as a Clerk in the said company but he did not support the case of the accused. He deposed that he was not aware as to whether Pawan Kumar was being issued receipts by Khakh Finance Co. regarding payment of loan. He did not identify his signatures on any of the receipts put to him. He deposed that he was not aware if Pawan Kumar took any loan from the finance company in the year 2002. He also did not know that Harbans Lal stood as guarantor for repayment of such loan of Pawan Kumar and gave the cheque in question to the complainant.



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DW2 Mohinder Pal deposed that accused Harbans Lal issued blank cheque in favour of aforesaid finance company of the complainant as a security for repayment of loan of Rs.20,000/- of Pawan Kumar in his presence. Similar statement was made by DW3 Kewal Krishan.

DW4 Arvind Sood, Handwriting and Finger Prints Expert deposed that he compared the questioned signatures of Gurmail Singh on receipt Ex.D2 dated 11.03.2003 with standard signatures marked S1 to S4 at the end of his statement made in the Court on 07.09.2005, at the end of his statement vide which he closed his evidence on 07.09.2005, at the end of Vakalatnama dated 16.09.2004 at the end of statement made in the court at the end of interim order dated 14.01.2006 and opined that the such questioned signatures mark Q and standard signatures mark S1 and S2 of Gurmail Singh were in the handwriting of one and the same person. He further opined that questioned writing Q2 and standard writing S5 and S6 are in the handwriting of one and the same person. He proved his report as Ex.DW4/A, negatives Ex.DW4/B1 to Ex.DW4/B8, photographic charts Ex.DW4/C and Ex.DW4/D.

7. Based on the evidence led, the accused/petitioner came to be convicted and sentenced by the Court of Judicial Magistrate, 1st Class, Phillaur vide judgment and order of sentence dated 13.12.2007 as under:-

Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
138 NI Act	RI for 01 years	Rs.1500/-	RI for 01 month



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8. The accused/petitioner preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge, Jalandhar vide judgment dated 17.11.2020.

9. The aforementioned judgments are under challenge in the present petition.

10. The learned counsel for the accused/petitioner contends that the cheque was dated 07.05.2004 but the notice of accusation the date of such cheque has been mentioned as 17.05.2004, thus vitiating the trial. He contends that the Courts below wrongly drew a presumption under Section 139 of the Negotiable Instruments Act that the cheque had been issued for the discharge of a legally enforceable debt despite the presumption having been rebutted by way of defence evidence. The evidence of DW4-Arvind Sood, the handwriting and finger print expert had not been considered in its proper perspective by the Trial Court and the Lower Appellate Court. He lastly contends that as against the cheque amount of Rs.3,20,000/-, a sum of Rs.1,60,000/- had already been deposited before this Court vide order dated 14.03.2012 because of which the sentence of the accused/petitioner had been suspended and as such, in view of the fact that the cheque was dated 07.05.2004, the impugned judgment of conviction was passed on 13.12.2007 and the appeal had been dismissed on 17.11.2010, the sentence of the accused/petitioner could be reduced to the period already undergone by him.

11. On the other hand, the learned counsel for the complainant contends that the offence stood established beyond reasonable doubt. A

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typographical error in the date of the cheque in the notice of accusation was not sufficient to reverse the finding of guilt. The presumption that the cheque had been issued for a legally enforceable debt had not been rebutted. The report of DW4-Arvind Sood had little relevance as the accused/petitioner had admitted that the cheque had been signed by him. He, therefore, contends that the present revision petition was liable to be dismissed.

12. I have heard the learned counsel for the parties.

13. Apparently, the accused/petitioner was aware that he was being prosecuted for dishonour of the Cheque No.0452797 dated 07.05.2004 (Ex.C1). The said cheque number is mentioned in the notice of accusation. The accused/petitioner was very well-aware that he was being prosecuted for the dishonour of cheque in question at every stage including while recording his statement under Section 313 Cr.P.C. The date of the dishonour of the cheque was correctly put to him. Therefore, that there has been absolutely no failure of justice on account of this typographical error. Further, the defence evidence as led is not sufficient to rebut the presumption of the cheque having been issued in the discharge of a legally enforceable debt. The report of DW4-Arvind Sood has little relevance once the signatures on the cheque were admitted by the accused/petitioner to be his. I may also add here that during the course of arguments, opportunities were given to the accused/petitioner to adequately compensate the complainant/his LRs but the accused/petitioner refused to do so.



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14. In view of the above, I find no merit in the present revision petition. Therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

15.01.2025
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No