**THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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2025:PHHC:166415

CRR-2065-2025 (O&M)
Date of decision: 01.12.2025.

PARDEEP KUMAR

...Petitioner(s)

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Deepak Kumar, Advocate,
for the petitioner.

<u>VINOD S. BHARDWAJ, J. (Oral)</u>

This revision petition has been filed aggrieved of the judgment of conviction and order of sentence dated 09.09.2022 passed by the Sub Divisional Judicial Magistrate, Ratia, whereby the petitioner had been convicted for the commission of offence under Section 138 of the Negotiable Instruments Act, 1881 and had been sentenced to undergo rigorous imprisonment for a period of one year and further to pay cheque amount as compensation in terms of Section 357(3) of the Cr.P.C. to the complainant within a period of one month.

2 A further challenge is raised to the judgment dated 01.08.2025, whereby the Additional Sessions Judge, Fatehabad, has dismissed the Criminal Appeal No. CRA/124/2022 preferred by the petitioner and affirmed the

judgment of conviction and order of sentence dated 09.09.2022 passed by the Sub Divisional Judicial Magistrate, Ratia.

3 Briefly stated, the facts of the present case are that the respondent-complainant instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 through its partner, Surjeet Singh son of Sh. Harbans Lal, averring that the respondent-complainant had business dealings with the petitioner. The petitioner used to purchase insecticides and pesticides from the complainant-firm. Upon rendition of accounts, a sum of ₹18,73,400/- was found outstanding against the petitioner. Accordingly, cheque No. 546696 dated 19.06.2017 was issued by the petitioner in favour of the complainant-firm in discharge of the aforesaid legally enforceable liability. On presentation, the cheque was dishonoured with the endorsement “Funds Insufficient” vide return memo dated 30.06.2017. A legal notice dated 18.07.2017 was thereafter issued by the complainant-firm; however, as the payment was not made despite issuance of the said notice, the complaint under Section 138 of the Negotiable Instruments Act, 1881 came to be instituted.

4. Parties appeared before the Court. Evidence was led. The respondent-complainant tendered following documents: -

Ex.Cl Original cheque No. 546696 dated 19.06.2017
Ex.C2 & C3 Return memo
Ex.C4 Legal notice
Ex.C5 Postal receipt
Ex. C6 Ledger account of Farmer Trading Co. firm from 1.4.2015 to 31.03.2016
Ex.C7 Ledger account of Farmer Trading Co. firm from 01.04.2016 to 31.03.2017

Ex.C8 Account ledger Farmer Trading Co. from 01.04.2019 to 31.03.2020

Ex.C9 Account ledger Farmer Trading Co. from 01.04.2020 to 19.03.2021

Ex.C10 to C30 Cash/credit memo of M/s Farmer Trading Company

Ex.C31 Form-A Register of Firm

Ex.C32 Balance sheet as on 31 March 2016 of M/s Farmer Trading Company

Ex.C33 Balance sheet as on 31 March 2017 of M/s Farmer Trading Company

Ex.C34 Balance sheet as on 31 March 2018 of M/s Farmer Trading Company

Ex.C35 Balance sheet as on 31 March 2019 of M/s Farmer Trading Company

Ex.C36 Balance sheet as on 31 March 2020 of M/s Farmer Trading Company

Ex.C37 Attested copy of Income Tax Return assessment year 2016-17of M/s Farmer Trading Company

Ex.C38 Attested copy of Income Tax Return assessment year 2017-18 of M/s Farmer Trading Company

Ex.C39 Attested copy of Income Tax Return assessment year 2018-19 of M/s Farmer Trading Company

Ex.C40 Attested copy of Income Tax Return assessment year 2019-20 of M/s Farmer Trading Company

Ex.C41 Attested copy of Income Tax Return assessment year 2020-21 of M/s Farmer Trading Company

Ex.C42 Affidavit of Pardeep Kumar proprietor of M/s farmer Trading Company

Ex.C43 Copy of voter card of Pardeep Kumar

Ex.C44 Copy of Pan Card of Pardeep Kumar

Ex.C45 Copy of Form VIII Licence to sell, stock or exhibit for sale or distribution of insecticides

Ex.C46. Copy of jamabandi for the year 2018-2019

5 On furnishing of the requisite documents, the evidence was closed. The statement of the accused was thereafter recorded under Section 313 Cr.P.C. wherein he denied the allegations in the charges. In his defence, the counsel exhibited document EX.D-1.

6 Parties were heard at length and considering the evidence as well as the documents on record, the Sub Divisional Judicial Magistrate, Ratia, held the petitioner guilty of having committed the offence under Section 138 of the Negotiable Instruments Act, 1881 and accordingly sentenced him to undergo rigorous imprisonment for a period of one year and to pay compensation equivalent to the cheque amount in terms of Section 357 (3) Cr.P.C.

7 Aggrieved thereof, an appeal was preferred by the petitioner bearing No. CRA/124/2022, before the Additional Sessions Judge, Fatehabad. The same was also dismissed vide judgment dated 01.08.2025. Hence, the present petition.

Counsel for the petitioner raises the following arguments:-

(i) That the respondent-complainant had placed reliance on the account ledger of the company, however, the said ledger/accounts were not countersigned by the petitioner, hence, the same cannot be held to be proved;

(ii) The petitioner is carrying on business under the name and style of M/s Pardeep Beej Bhandar and the firm has not been impleaded as a party, hence, the petitioner could not have been tried for commission of the offence by the Sole

Proprietorship firm as the cheque had been issued by him in discharge of the liability of the firm. In support of his argument, counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the matter of ***Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd. reported as 2012 (2) RCR (Criminal) 854***;

8 Upon a specific query to learned counsel for the petitioner as to whether the defence of non-supply of material was raised during the cross-examination of the witnesses, or whether any such question was put to the complainant when he appeared as a witness, counsel has failed to refer to any such question or suggestion having been made during the course of cross-examination. On being confronted as to whether at the time of rendition of accounts and ascertaining the final dues, before issuance of the cheque, whether the now disputed supplies were accounted for or not, he is not in a position to respond to the same.

9 A further question was put to the petitioner as to how the judgment in the matter of ***Aneeta Hada (supra)***, would be applicable to the case of the petitioner since in the said case, the cheque had been issued by the company, which is a separate juristic entity in law, whereas the firm M/s Pardeep Beej Bhandar is the sole proprietorship firm, which is not a separate juristic entity from its Proprietor, he is not in a position to offer any response to the same.

10 I have heard the learned counsel appearing for the petitioner and have gone through the judgments that have been placed on record.

11 Before proceeding further, it would be apposite to make a

reference to the findings that have been recorded by the trial Court before convicting the petitioner. The relevant extract reads thus: -

> *"14. The complainant firm has appeared with all the statutory presumptions available to a complaint in an offence under Section 138 of the Act. It is accused who has to show to the court that the stand taken by the complainant is not convincing and that the defence of accused is more probable, in the given fact and circumstances of the case. The defence adopted by the accused is that the complainant firm has filed the present complaint on the basis of false and fabricated documents and bills to grab the amount from the accused and that cheque in question was never handed over to the complainant firm in discharge of any legally enforceable debt/liability. Complainant has produced voluminous evidence in support of its case. The said evidence of the complainant firm includes cash/credit memos/bills (Ex. C10 to Ex. C30) which are proved from the original record produced through CW1, who has stood cross-examination by learned counsel for accused. Further there is an affidavit Ex.C42 of the accused wherein he has admitted his debt/liability of Rs.18,73,400/- towards the complainant firm. The said document is not disputed. Even the Income Tax Return (ITRs) produced by the complainant are not disputed sustainably. The representative of the complainant firm has given statement on 13.06.2022 and his statement has not got impeached by the accused, much less sustainably. Admittedly accused was having business dealings with the complainant firm. Now, his disguised and veiled defence under Section 313 Cr.P.C that the complainant firm was alien to accused or his firm M/s Pardeep Beej Bhandar, is not sustaining. From the evidence on record, defence of the accused is not probablized, rather from the evidence of the complainant and the admitted documents of the accused more specifically Ex.C42, the case of*

the complainant stands proved and defence of accused stands falsified. Proviso to Section 118 of Act provides that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him. The complainant (CW1) has proved that it has been a holder in due course while accused has failed to prove any fraud etc.

15. As per the section 139 of the Act, there is a presumption in favour of the holder of a cheque that the same has been issued in discharge of any debt or any other liability. In the present case also, the complainant firm has duly proved valid issuance of cheque and itself through CW.I as holder of cheque in due course. As such, once cheque is proved to be issued by the accused, the Court has to presume under section 139 of the Act that holder of the cheque received the cheque in discharge of whole or in part of debt. Although, said presumption is rebuttable one, however, burden of proving that cheque has not been issued for debt or liability is on the accused. No evidence to rebut the presumption under Section 139 of N.I.Act, nor to rebut Ex.C42 has been led by the accused. Rather Ex.C42 destroys whole defence of accused.

16. It is a fact on record that accused has tried his hand to evade the liability by absconding from process of court. There is no dispute about address of accused who is a local resident of district. It was only when the accused was on the point of being declared proclaimed person, more specifically when the warrant for attachment of properties of accused was issued, that he put his appearance before the court. This conduct of accused is against his defence and equity which he could have *sought. The version of accused cannot be believed. The purpose of issuance of notice is to give an oppurtunity to the accused to make the payment of cheque amount within the stipulated period. It is only upon the failure of the accused to make the payment within the stipulated period that the offence U/s 138 of Act is made out. Where the complainant has shown that the legal notice was sent to the correct address, then the court shall presume that the legal notice must have been delivered to the accused in the normal course of business. In such situation, a presumption is taken by a court and the onus shifts upon the accused to rebut the presumption of service. It is, therefore, clear that it is for the accused to show the cause for non-service of notice. No circumstance rendering non-service has been brought on record by the accused. Even when the complainant has denied the suggestion regarding non-service of legal notice in his cross-examination, the accused did not bring on record any evidence in this regard. Mere denial on the part of accused regarding non-service of legal notice is not sufficient. Moreover in view of the law laid down in C.C. Alavi Haji v. Palapetty Muhammed and another, 2007(3) RCR (Criminal) 185, the non-receiving of legal notice, prior to the filing of the complaint, has been rendered insignificant. The accused could make the payment within 15 days of receiving the summons from the Court. Thus this defence also is rendered futile for accused due to his own act and conduct."*

12 It is evident from the aforesaid findings that the entire original record had been adduced by the respondent-complainant, including the cash/credit memos/bills along with an affidavit C-42 sworn by the petitioner himself admitting his debts/liability of Rs.18,73,400/- towards the complainant firm. Even the income tax returns were produced by the

complainant to establish the said liability and the claims. Thus, the argument as regards the invoice memo's having not been proved or countersigned by the petitioner pales into insignificance not only for the reason that the account had been voluntarily settled amongst the parties but also by the affidavit of the petitioner. A settlement of accounts infers that all disputed invoices are duly accounted for. The argument based upon random invoices, by disputing the same at this stage, would be unsustainable. Once the settlement of the final dues is not disputed, and the same stands acknowledged by an affidavit Ex.C-42 and admitting issuance of the cheque in discharge of liability, argument does not hold merit.

13 The petitioner being a signatory to the cheque, there is a presumption as regards the same being in discharge of liability towards him.

14 The arguments of the petitioner were considered also in appeal and were not accepted. Paras no.15 to 18 of the judgment deal with the said arguments extensively and the same are not being reproduced here to avoid repetition. For the said reason, the argument of the petitioner about disputing the liability, by placing reliance on certain random bills, is rejected.

15 In so far as the argument that the cheque in question was issued in discharge of the liability of the sole proprietorship firm and in the absence of the proprietorship firm being prosecuted, the petitioner could not have been convicted is concerned, I am of the opinion that the said argument is grossly misconceived. Sole proprietorship firm is not a separate juristic entity and in fact the liability of sole proprietorship firm is that of a proprietor. The proprietorship firm being an alter ego of the individual itself, the arraignment of the sole proprietorship is not a statutory pre-condition or

a mandate for maintaining a complaint under Section 138 of the Negotiable Instruments Act, 1881. Reliance on the judgment in the matter of ***Aneeta Hada (supra)***, is misconceived inasmuch as the same pertained to issuance of a cheque by a company which is a separate juristic entity in law

16 While sitting in a revisional jurisdiction, the High Court, in any case, would not interfere with the judgments passed by the Courts unless gross illegality, perversity or misappreciation of evidence is pointed out.

17 Finding no such error, the present petition lacks merit and is accordingly dismissed.

18 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

December 01, 2025. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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