2025:PHHC:128759

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110 **CRR-2294-2025(O&M)**

Date of Decision:15.09.2025

Virender Singh Dongwal **.....Petitioner**

Versus

Manju Aggarwal **.....Respondent**

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

Present: Mr. Kunal Dawar, Advocate, for the petitioner.

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

<u>CRM-37001-2025</u>

Application is allowed, as prayed for.

<u>CRR-2294-2025(O&M)</u>

The present petition assails the judgment dated 25.08.2025 passed by the Additional Sessions Judge, Faridabad whereby appeal of the petitioner against the judgment of conviction dated 18.07.2023 and the order of sentence dated 20.07.2023 passed by the Judicial Magistrate First Class, Faridabad, has been dismissed and the conviction as well as sentence awarded to the petitioner has been affirmed.

The facts of the present case, in brief, are that the respondent-complainant, through his special power of attorney, instituted a complaint alleging that he was engaged in the business of manufacturing steel, iron, corrugated and wooden packing materials as well as undertaking general supply orders. In the course of such business dealings with the petitioner-accused, a sum of ₹11,37,827/- was found to be outstanding as per the settlement of accounts.

It was alleged that, in order to discharge this liability, the petitioner-accused issued four post-dated cheques i.e. Cheque No.000261 dated 25.09.2018 for ₹3,28,298/-, Cheque No.000262 dated 20.09.2018 for ₹3,56,480/-, Cheque No.000264 dated 05.10.2018 for ₹2,80,238/-, and Cheque No.000263 dated 01.10.2018 for ₹1,72,811/-, all drawn on Bank of Baroda, 1-2 Chowk NIT, Faridabad, collectively amounting to ₹11,37,827/-.

Upon presentation, the aforesaid cheques were dishonoured by the bank on 05.10.2018 with the remarks "funds insufficient." Despite the issuance of a statutory notice dated 11.10.2018, no payment was made. Consequently, the respondent instituted a complaint under Section 138 of the Negotiable Instruments Act, registered as NACT/10200/2018, before the Court of the learned Judicial Magistrate First Class, Faridabad.

The parties led their respective evidence and the petitioner-accused took a specific plea that he had friendly relations with the respondent-complainant and that no material was ever received by him from the complainant. The blank cheques were however misused even though there was no legally enforceable liability towards the complainant.

On consideration of the respective evidence adduced as well as arguments before the court, including the evidence led by the petitioner-accused in his defence, the learned Trial Court, vide its judgment dated 18.07.2023, held the petitioner guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Consequent thereto, vide order of sentence dated 20.07.2023, the petitioner was sentenced to undergo simple imprisonment for a period of six months for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and to pay a compensation to the tune of Rs.14,50,000/- under Section 143(1)(proviso) of The Negotiable Instruments Act read with Section 357(3) of The Code of Criminal Procedure, 1973.

Aggrieved of the said judgment of conviction and order of sentence, the petitioner preferred the statutory appeal before the court of Additional Sessions Judge, Faridabad. Vide judgment and decree dated 25.08.2025, the said appeal was dismissed and the judgment of conviction dated 18.07.2023 and order of sentence dated 20.07.2023 were affirmed.

Learned counsel appearing for the petitioner submits that the petitioner-accused had never received any supplies from the respondent-complainant and that the blank signed cheques, which had been handed over earlier, were misused by the complainant. It is argued that neither any purchase orders in support of the invoices have been produced nor have the stock registers or payment slips from the weighbridge been adduced in evidence to establish the alleged supply of material.

Reliance has also been placed on the testimony of DW1 Bhagat Singh, who categorically denied the claim of the respondent-complainant and deposed that the petitioner had, in fact, borrowed only a sum of Rs.4,50,000/- from the husband of the respondent-complainant in the year 2013 at an interest rate of 6.5% per month. It was further stated that four signed cheques had been issued merely as security towards the said loan. It is argued with vehemence that this aspect has not been duly considered by the Courts while recording the conviction of the petitioner.

I have heard learned counsel appearing on behalf of the petitioner and have also gone through the documents appended along with the present petition.

Before proceeding further into the matter, it is apposite to make a reference to the discussion on the aforesaid argument by the first Appellate Court, the relevant part thereof reads thus:-

> *"However, I am not convinced with the said arguments since plea of taking loan is first time taken by the appellant in evidence of DW2 Bhagat Ram. Earlier in reply to the legal notice, he took the plea that though he received the material from the respondent but payment was made time to time. However, except payment of Rs.30,000/- on 30.12.2016 shown in bank account statement Ex. D1, no document is produced to prove that he had made the entire payment. While DW2 Bhagat Singh, has clearly admitted that the bills Ex.C1 to Ex.C4 bears signatures of the appellant/convict acknowledging the receipt of material. Besides it, in sale Tax and VAT return Ex.C-16(Colly) for the period w.e.f. 01.07.2015 to 30.09.2015, appellant himself has shown that he had received the material from the respondent/complainant firm i.e. M/s Shiv Shakti Packaging Industries (complainant) for an amount of Rs.6,52,168/- and paid tax of Rs.32,608/- on it. Further in VAT return for the period w.e.f. 01.10.2015 to 31.12.2015, he has shown that he has received material from the respondent/complainant firm for a sum of Rs.4,31,475/- and paid tax of Rs.21,573/-. The complainant has also placed on record income tax return of his firm wherein also he shown that he sold material to the appellant to the tune of Rs.11,37,827/-. The aforesaid documents proves*

> *that complainant firm had supplied material to the appellant/convict for an amount of Rs.11,37,827/-. Merely, because respondent/complainant has failed to produce purchase order, stock register, Dharamkanta slip and vehicle number, through which material was supplied, that itself cannot proved that no material at all is supplied by the respondent/complainant to the appellant, particularly when the appellant himself has shown in his sale tax and VAT returns that he has received the material from the respondent/complainant and admitted his signatures of bills. Hence, appellant has failed to rebut the presumptions under section 118 and 139 of N.I. Act against him by raising a probable defence, therefore, offence under section 138 of N.I. Act is made out against him.*
>
> *No other point has been urged before me.*
>
> *In view of the above discussion, the appeal filed by appellant/convict is hereby dismissed while affirming impugned judgment of conviction and order of sentence. Appellant-convict Virender Singh Dongwal, who is on bail, be taken into custody and send to jail for serving his sentence awarded by the trial Court under jail warrants. His warrants of jail for execution of sentence be prepared separately. Period of detention, if any, already undergone by the convict/appellant during inquiry, investigation and trial shall be set off against his substantive sentence. Trial Court record along with copy of this judgment be sent back."*

It is evident from a perusal of the above that the contention of the petitioner that there were no business transactions between the petitioner-accused and the respondent-complainant and that the supply of material was never established, stands wholly belied from the record. The petitioner himself had derived benefit of the said transactions which were reflected in his VAT returns for the period from 01.10.2015 to 31.12.2015 depicting receipt of the material. Though there may be some variation in the quantum of benefit reflected therein, however, such variation cannot confer a defence to an extent that no business transactions existed at all or that no material was supplied. On the contrary, the exhibited documents on record undisputedly establish that not only were there business dealings inter se the parties, but also that the material, as claimed by the complainant, had indeed been supplied.

Besides, there is no dispute raised to the findings recorded that the defence of friendly loan cropped up for the first time in testimony of defence witness. Hence, the argument is an afterthought. The entire case being set up of lack of business relationship having failed, the petitioner cannot switch to a new argument, which was not in defence.

Besides, in a revision petition, this Court does not undertake re-appreciation of the evidence already adduced. Its jurisdiction is confined to examining whether there exists any illegality, perversity, or impropriety in the judgments under challenge.

From a perusal of the orders under challenge, I find that there is no illegality, perversity or impropriety in the same and the findings can't be held as bad. Consequently, finding no merits, the present revision petition is accordingly dismissed.

Since the main petition is dismissed, CRM-37002-2025 also stands dismissed.

September 15, 2025 **(VINOD S. BHARDWAJ)**
seema **JUDGE**

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