IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1308-2007
Date of Pronouncement: 16.04.2026

SHASHI PAL

... Petitioner

Versus

STATE OF PUNJAB & ANOTHER **...Respondents**

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Garima Dixit, Advocate (Amicus Curiae) for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab for respondent No.1.

Ms. Dheerja, Advocate (Amicus Curiae) for respondent No.2.

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JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the judgment dated 26.07.2007 passed by the Sessions Judge, Kapurthala vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 27.10.2006 passed by the Sub Divisional Judicial Magistrate, Sultanpur, Lodhi has been dismissed.

2. The brief facts are that the complainant/respondent No.2 (hereinafter known as respondent No.2) is a resident village Fauji Colony, Tehsil Sultanpur of Lodhi, District Kapurthala. The petitioner/accused (hereinafter known as the petitioner) was liable to pay an amount of Rs. 46,000/- to the respondent No.2 and in order to discharge that liability, he issued a cheque bearing No.S/B No. 567351 of Rs. 46,000/- dated 08.11.2005 drawn on The Kapurthala Central Cooperative Bank, Branch Sultanpur Lodhi

in favour of the respondent No.2. The petitioner promised that whenever the cheque would be presented, it would be encashed. It is alleged that the respondent No.2 presented the said cheque for encashment but the same was returned back with the remarks "insufficient funds". Thereafter, the respondent No.2 served a registered notice dated 03.02.2006 as required under law requesting the accused to make the payment but the petitioner failed to make the payment. So under these circumstances the respondent No.2 was constrained to file the complaint.

3. After preliminary evidence, the petitioner was ordered to be summoned to face Trial under Section 138 of the Negotiable Instruments Act. The petitioner appeared and was released on bail. Then a notice under section 138 of the Negotiable Instruments Act was served upon the petitioner, to which he pleaded not guilty and claimed trial.

4. Based on the evidence led, the petitioner came to be convicted and sentenced by the Court of Sub Divisional Judicial Magistrate, Sultanpur Lodhi vide judgment dated 27.10.2006 as under:-

Sections	**RI**	**Fine**	**In default of payment**
138 of the NI Act	RI for 06 months	Rs.500/-	RI for 15 days

5. Aggrieved by the judgment and order of sentence dated 27.10.2006 passed by the Trial Court, an appeal was preferred which came to be dismissed by the Court of Sessions Judge, Kapurthala vide order dated 26.07.2007.

6. The learned Amicus Curiae for the petitioner contends that the judgments under challenge are based on mere conjectures and surmises and are not sustainable in law. The respondent No.2 has not complied with the

mandatory provisions of the Negotiable Instruments Act. The respondent No.2 has failed to prove his case and the Courts have wrongly held that the respondent No.2 remained successful in proving the guilt of the petitioner under the Negotiable Instruments Act. The respondent No.2 has not proved the acknowledgment of the notice allegedly sent to the petitioner. This is also fatal to the case of the respondent No.2. The only memo Ex.P2 proved on record by the respondent No.2 pertains to Punjab National Bank, whereas the said cheque has been alleged to be dishonoured by the Kapurthala Central Cooperative Bank Ltd., Sultanpur Lodhi. She, therefore contends that the judgment of conviction is liable to be set aside and the petitioner ought to be acquitted of the charges framed against him.

7. On the other hand, the learned Amicus Curiae for the respondent No.2 contends that the signatures on the cheque have been admitted by the petitioner. Therefore, it must be presumed that the said cheque was issued in favour of respondent No.2 towards the discharge of a legally enforceable debt or liability unless the said presumption is rebutted which in the instant case has not so been rebutted. Further, the return memo has rightly been issued by the Bank of the respondent No.2 i.e. Punjab National Bank. She, therefore contends that no fault can be found with the impugned judgments and therefore, the present petition is liable to be dismissed.

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

9. Admittedly, the cheque Ex.C1 bears the signature of the petitioner thereon. So, when once the petitioner has not disputed his signature on Ex.CI, it must be presumed that the same was issued by him in favour of respondent No.2 towards the discharge of his debt or liability. Though, this

presumption is rebuttable and the onus is on the petitioner. Mere denial by the petitioner is not sufficient to shift his burden on the respondent No.2. The petitioner has to prove by leading cogent evidence or by the cross-examination of the respondent No.2 that there was no debt or liability of the respondent No.2 towards him.

10. Under Section 118 of the Negotiable Instruments Act, unless the contrary is proved, it is to be presumed that the negotiable instrument like the cheque Ex.C1 has been made or drawn for consideration. Under Section 139 of the Negotiable Instruments Act, the Court has to presume, unless the contrary is proved, that the holder of the cheque like respondent No.2 herein received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in a complaint under Section 138 of the Negotiable Instruments Act, the Court has to presume that the cheque had been issued for a debt or liability.

11. Therefore, it must follow that the petitioner borrowed Rs.46000/- from respondent No.2 and in order to repay this amount, he issued cheque Ex.C1, in favour of respondent No.2 which when presented for encashment, was returned unencashed to the latter, with memo Ex.C2, containing remarks of insufficiency of funds in the account of the petitioner, and thereupon, 15 days notice through registered post was served upon the petitioner by respondent No.2 asking him to make payment, but he failed to make the payment within 15 days, after the receipt of registered notice, and therefore incurred the liability for commission of the offence punishable under Section 138 of Negotiable Instruments Act. The return memo has

rightly been issued by the Bank of the respondent No.2 i.e. Punjab National Bank.

12. The petitioner was under an obligation to ensure that the cheque Ex.C1 when presented for encashment with the banker was encashed. The dishonour, thereof, attracts commission of the offence punishable under Section 138 of the Negotiable Instruments Act by the petitioner. He could have got himself exonerated, by making the payment of the amount, as mentioned in cheque Ex.C1 within fifteen days after receipt of notice. However, he did not do so.

13. In the above factual and legal scenario, the petitioner has rightly been convicted by both the Courts below.

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

(JASJIT SINGH BEDI)
JUDGE

16.04.2026
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No