2026:PHHC:011329

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

240

CRR-2500-2013 (O&M)
Date of decision: 27.01.2026

Darshan Singh ...Petitioner(s)

VERSUS

Manu Kant Khera and another ...Respondent(s)

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

Present :- Mr. R.S. Rangpuri, Advocate for the petitioner.

None for respondent No.1.

Mr. Ritu Raj Singh, AAG Punjab, respondent No.2.

*****

VINOD S. BHARDWAJ, J. (Oral)

1. The present criminal revision petition has been filed challenging the judgment of conviction and order of sentence dated 09.09.2011 passed by the Chief Judicial Magistrate, Sri Muktsar Sahib as well as the judgment dated 10.07.2013 passed by the Additional Sessions Judge, Sri Muktsar Sahib, whereby the appeal preferred against the judgment of conviction and order of sentence dated 09.09.2011 was dismissed. The revisionist-petitioner was sentenced as follows: -

Under Section	Sentence
138 of the Negotiable Instruments Act, 1881	Rigorous imprisonment for a period of 02 years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo RI for a period of 01 month.

.

2. Briefly summarized, the facts of the present case are that respondent No.1-complainant filed a complaint claiming that he is the sole proprietor of M/s Nanak Chand Ram Chand, New Grain Market (hereinafter referred to as 'the Firm'), and is doing the business of Commission Agent. The complainant-Firm had been paying the sales tax and income tax and the documents were presented to the respective departments. The petitioner-accused used to sell the agricultural produce through the commission agency of the complainant and was also regularly obtaining loans. On 17.11.2004, the petitioner-accused took a loan of Rs.45,000/- and also settled the previous overdue amount to a sum of Rs.3,60,000/-. He obtained different advances over a period of time, and on 30.11.2004, the total amount was orally settled to Rs.4,00,000/-. The interest overdue on the said amount was Rs.2,14,967/-. Accordingly, the petitioner-accused is stated to have issued cheque No.228703 dated 14.11.2007 drawn on Punjab National Bank, Sadar Bazar Branch, Sri Muktsar Sahib for a sum of Rs.6,14,967/- for encashment. However, on presentation, the cheque was dishonoured on account of "funds insufficient". A legal notice dated 10.12.2007 was sent through registered A.D. On failure to pay the amount within the prescribed period, the above complaint was instituted.

3. Preliminary evidence was led by the complainant-respondent and on finding sufficient evidence, the petitioner was summoned for the commission of an offence under Section 138 of the Negotiable Instruments Act, 1881 on 06.08.2008. Notice of acquisition was thereafter served upon him, to which he pleaded 'not guilty' and claimed trial.

4. In the evidence led by complainant-respondent No.1, he also examined Vijay Kumar, Clerk, Punjab National Bank, who deposed to the effect that the account of the petitioner-accused/Darshan Singh was maintained with their bank and brought the statements of the account of petitioner-accused from 01.04.2007 to 13.10.2007 and 25.03.2008, as well as the cheque return register, which were proved as Ex.C1 and C2. He also identified the signatures of the Firm, which had filed the complaint and deposed in the cross-examination that the Firm was represented by Surinder Kumar. Further, the respondent-complainant examined Satish Kumar son of Durga Dass, who tendered his affidavit and brought the original account books of the complainant-Firm. He deposed that he had been a Clerk/Munim with the Firm since 1996, that Manu Kant was the sole proprietor of the Firm and that the petitioner-accused used to sell the crop through the commission agency of the complainant and had also obtained loans. The financial transactions for which the cheque in question had been issued were also exhibited. Complainant-respondent No.1 also appeared in the witness box and swore an affidavit to the effect that he was the sole proprietor of the Firm and that the firm was engaged in the said business. The evidence of the complainant was closed thereafter.

5. The statement of the petitioner-accused was recorded under Section 313 Cr.P.C. in which the allegations, contents of the complaint, the evidence on record, the documents produced by the complainant, witnesses examined and all incriminating evidence were put to him in the vernacular. He claimed that he is innocent, that the complainant had misused the

security cheque given by him at the time of opening the account on a commission agency basis and that nothing was due against him.

6. Upon consideration of the respective arguments, the Chief Judicial Magistrate, Sri Muktsar Sahib convicted the petitioner for commission of offence under Section 138 of Negotiable Instruments Act, 1881 and vide order of even date sentenced him to undergo RI for a period of 02 years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo RI for a period of 01 month.

7. Aggrieved of the same, the petitioner preferred the appeal No.74/04.10.2011 before the Court of Sessions Judge, Sri Muktsar Sahib, which was also dismissed vide judgment dated 10.07.2013. Hence, the present criminal revision petition.

8. Counsel appearing on behalf of the revisionist-petitioner contends that the respondent-complainant had instituted the complaint on a plea that he was the proprietor of a proprietorship firm; however, no evidence was led by him in this regard. It is contended that in the absence of the respondent-complainant, establishing himself to be the sole proprietor of the proprietorship firm, he could not have instituted any complaint or proceedings against the petitioner herein.

9. No one has chosen to enter appearance on behalf of respondent No.1-complainant, even though counsel for the respondent-complainant had been informed about the listing of the present case. The matter pertains to the year 2013 and has already been delayed. No purpose would be served by adjourning the case only to await the presence of counsel for respondent

No.1. The case is thus being examined on merits.

10. In support of his case, counsel for the revisionist-petitioner has placed reliance on the judgment passed by the Supreme Court in the matter of '***Milind Shripad Chandurkar Vs. Kalim M. Khan and another***' reported as ***2011(4) SCC 275***.

11. It is evident from a perusal of the order sheets that the aforesaid argument on merits had been advanced by the counsel on 19.08.2013 whereupon the Court directed the petitioner to place on the record the examination-in-chief and cross examination of the respondent-complainant to show that a question was put to him with regard to his proprietorship over the firm in question.

12. On resumed hearing, counsel for the petitioner does not dispute that no suggestion was put forth to the respondent-complainant or even to PW-2-Satish Kumar, i.e. the Munim/Clerk of the proprietorship, to the effect that the respondent-complainant was not the proprietor of the said proprietorship firm. Further, even in the statement recorded under Section 313 Cr.P.C., there is no defence to the effect that the cheque in question had not been issued by the petitioner and/or that the respondent-complainant was not a proprietor of the proprietorship firm. Further, the judgment of the Additional Sessions Judge, Sri Muktsar Sahib, has been perused. It is a matter of fact, that a suggestion specifically put forth by the petitioner herein was "It is wrong to suggest that being the owner of the Firm, he has deposed falsely".

13. The conclusion which thus flows from the aforesaid suggestion

is that the status of the respondent-complainant as the owner/proprietor of the Firm is not disputed by the petitioner herein. Instead, the suggestion specifically leads to a conclusion that the suggestion itself admitted him to be the proprietor. The argument now thus being sought to be advanced, at this stage by counsel for the petitioner, is contrary to his own suggestion and the record. Legal position is settled that a plea which is not borne out from the specific defence taken by the petitioner, during the course of the trial, cannot be completely turned over to take a completely contradictory plea. It is evident that the PW-2- Satish Kumar, Munim/Clerk, had also specifically deposed with respect to the respondent No.1-complainant being the proprietor and the affidavit sworn by respondent No.1-complainant had a specific averment to the effect that he was the sole proprietor of the proprietorship concern. In the absence of any suggestion or input to the respondent, the said specific plea on an affidavit would be deemed to be a deposition before the Court and has to be accepted. There is no further burden upon the respondent to prove a fact which has not been disputed. The relevant extract of the judgment passed by the Additional Sessions Judge, Sri Muktsar Sahib, reads thus:-

> *"16. After hearing the learned counsel for the appellant and the learned counsel for the respondent, I am of the opinion, that admittedly, there is no evidence on the file, that from 2004 till 2007 i.e. date of issuance of cheque, there took place any business transactions between the appellant and the respondent, but this fact has not been denied, if appellant had*

been selling his crop before 2004, through the commission agency of respondent and, as per the account books of the respondent, to which, the presumption of truth is attached, an amount of Rs.4,00,000/- was outstanding, as on 30.11.2004 and on calculation of interest, to the tune of Rs.2,14,067/-, the total amount payable by the accused, becomes Rs.6,14,967/- and of the said amount, the cheque Ex.C3, was issued by the appellant, in discharge of his legal liability, towards the firm Nanak Chand Ram Chand.

17. Admittedly, the Hon'ble Supreme Court, in case law (supra), has held, "Purported story that appellant/accused would himself come forward to return the amount by a cheque knowing fully well, that he did not have any sufficient fund is difficult to believe." However, counsel for the respondent, in reply, submitted that since, this amount was due and before filing the suit for recovery, the appellant was called and asked to return the amount and honestly he issued the cheque. Whereas, when, this cheque was dishonoured, a legal notice Ex. C16 was served upon the appellant, through registered cover letter, as well as UPC, The postal receipt of RC Ex. C17 and U.P.C. Ex. C18 are proved on the file, and it is not the plea of the accused, that the notice was not received by him. It means, the notice was received and despite that, no reply was filed and, in this regard, Hon'ble Supreme Court of India, in a case law *(supra) has held, "The very fact that the accused had failed to reply to the statutory notice u/s 138 of the Act, lead to inference that there was merit, in the complainant version." Similarly, in the present case, in hand, neither any reply was filed by the appellant, nor he could prove, if the cheque was issued as a security. If it was issued as a security, why he remained mum till 2004, when account was settled, or when he stopped selling his crop, through the commission agency of the respondent. It means, there was no blank cheque, having signatures of the appellant, lying with the respondent firm. If it was so, he could have duly taken this plea, by filing reply to the said notice Ex.C16, but he did not. Therefore, the case law, referred by learned counsel for the appellant, is of no avail to him, whereas, case law referred by learned counsel for the respondent, is fully applicable to the present case, in hand, wherein, it is held, "The very fact that accused has failed to reply to the statutory notice u/s 138 of the Act, leads to the inference that there was merit, in the complainant version." Similarly, in the given circumstances, it shall be assumed, that whatever has been stated, in the complaint, is correct and the cheque Ex. C3 was issued by the appellant, in discharge of his legal liability and no payment of the same has still been made till today. Therefore, appellant is liable u/s 138 of the N.I. Act.*

18. So far as second contention of the learned counsel for the appellant is concerned, about the maintainability of the complaint I am of the view, that cheque has been issued, in the name of Nanak Chand Ram Chand and it is not the name of any person, only because word firm, has not been used before writing the name Nanak Chand Ram Chand does not mean that it has been issued to a person, in his individual capacity and it is not the case of the appellant, that respondent is not sole proprietor of the firm M/s Nanak Chand. So, inference shall be drawn, that the cheque was issued, in the name of the firm and sole proprietor of the firm rightly filed this complaint.

19. So far as question of proving the- fact, that Manu Kant Khera is sole proprietor of the firm is concerned, he, was only need it to prove, had this fact been denied by the appellant. However, appellant while cross-examining Manu Kant, on 20.4.2011, put a specific suggestion as under:-

> *"It is wrong to suggest that being owner of the firm, he has deposed falsely."*

Meaning thereby, the appellant himself admitted the respondent, sole proprietor of the firm. So he need not to prove the same and it is settled principle of law, the fact not controverted, in the cross-examination, shall be assumed to have been admitted. So, it means, appellant has admitted the respondent, as sole proprietor of the firm. Therefore, the case

> *<u>law, referred by appellant, in support of his arguments, is of no avail to him</u>.*
>
> *20. Except, the above said arguments, nothing more has been argued by the counsel for the appellant. As such, for the reasons, given above, I find no illegality, or irregularity, in the judgment and sentence, passed by the trial court. Resultantly, the judgment and the order passed by the trial court is upheld and appeal is consequently dismissed. Conviction warrants of the accused be issued. Trial court record alongwith copy of this judgment be sent back. Appeal file be consigned to the Record Room.".*

(emphasis supplied)

14. It is evident that the arguments advanced by the counsel for the petitioner had been considered by the appellate Court and the same were rejected by referring to the specific evidence on record. A judgment has to be seen in the context of the facts and issues raised therein and are not to be applied blindly. The facts of the present case clearly show that the petitioner herein never raised any dispute with respect to the status of the respondent-complainant being the sole proprietor of the Firm. Such an argument hence would not be taken into consideration at the stage of Revisional jurisdiction, more so in the absence of any evidence having been led to corroborate the arguments sought to be advanced. The revision petition thus deserves dismissal lacking on merits.

15. At this stage, counsel for the revisionist-petitioner prays that leniency be shown to the revisionist-petitioner in so far as the sentence awarded is concerned. It is submitted that the revisionist-petitioner was awarded a sentence of 02 years, out of which he has undergone an actual sentence of 5 months and 10 days. He further contends that the revisionist-petitioner is not involved in any other case. Besides, the issue at hand pertains to the year 2008 and a period of more than 18 years has already elapsed. The instant revision petition also remained pending for a period of nearly 13 years. He has thus undergone the agony of a criminal trial and incarceration for a period of nearly two decades. Counsel for the revisionist-petitioner further contends that the revisionist-petitioner would be nearly 60 years of age presently. Since no one has chosen to appear on behalf of the respondent-complainant, the said plea is being examined.

16. I have heard the learned counsel for the revisionist-petitioner on sentence and its quantum, on merits.

17. After taking into consideration the arguments raised by the counsel for the revisionist-petitioner for the reduction of the sentence, I find that the arguments raised by the counsel for the revisionist-petitioner merit consideration.

18. Invariably, the complaint had been instituted in January 2008 and a period of more than 18 years has elapsed. There is nothing on record to suggest that the petitioner is involved in any other criminal case or has misused the concession of bail. Besides, the petitioner is now at an advanced stage of his life (60 years as is being claimed), and relegating him

to undergo the remaining sentence, at this stage, would lead to further social incarceration and hardship. Besides, the complainant has chosen to stay away from the proceedings as well. The parties have thus resiled to their fate and have moved ahead in life. Scratching healed wounds wouldn't grant solace to anyone.

19. Under the given circumstances, the present revision petition is ***partly allowed***. While the judgment of conviction passed by both the Courts is upheld, the sentence awarded to the revisionist-petitioner is reduced to the period already undergone.

20. All pending misc. application(s), if any, stand ***disposed of***.

(VINOD S. BHARDWAJ)
JUDGE

27.01.2026
Mangal Singh

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