

**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA**

**Cr. Revision No.84 of 2010**

**Date of Decision No. 31.07.2018**

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Bahadur Singh

..... Petitioner

Versus

State Bank of Patiala

.....Respondent

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Coram:

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

Whether approved for reporting? <sup>1</sup>

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**For the Petitioner :** Mr. Ashok Kumar, Advocate vice Mr.  
Vishwa Bhushan, Advocate.

**For the Respondent:** Mr. G.C.Gupta, Senior Advocate with  
Ms. Meera Devi, Advocate.

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**Sandeep Sharma, Judge** (oral):

Instant Criminal Revision petition filed under  
Section 397/401 of the Code of Criminal Procedure, is directed  
against the judgment, dated 31.7.2009 passed by learned  
Additional Sessions Judge, Solan, District Solan, H.P., in  
Criminal Appeal No.15-S/10 of 2009, affirming the judgment of  
conviction and sentence dated 23.4.2009, passed by learned  
Judicial Magistrate, 1<sup>st</sup> Class, Kandaghat, District Solan,  
H.P., in Criminal case No. 12/3 of 2008, whereby learned trial

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<sup>1</sup> Whether the reporters of the local papers may be allowed to see the judgment?

Court while holding petitioner-accused guilty of having committed an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for a period of three months and to pay compensation to the tune of Rs. 90,000/- to the complainant.

2. Briefly stated facts, as emerge from the record are that respondent (***for short ‘complainant’***) filed a complaint under Section 138 of the Negotiable Instruments Act ( ***for short ‘Act’***) in the Court of learned Judicial Magistrate, 1<sup>st</sup> Class, Kandaghat, District Solan, H.P., alleging therein that the petitioner (***for short ‘accused’***), had obtained a loan of Rs.50,000/- from the complainant-Bank for the purchasing of consumer durables(furniture) on 18.01.2003 at the rate of 13% interest per annum with quarterly rests at floating rate. Accused with a view to discharge loan liability and for consideration, issued cheque No.727529, dated 27.10.2007 amounting to Rs.86,804/- of his account No.5507101753 duly signed by him in favour of the complainant-bank to be drawn on State Bank of Patiala, Sanjauli, Shimla. However, fact

remains that aforesaid cheque on its presentation was returned vide memo dated 01.11.2017 with the remarks “ **funds insufficient**”. Complainant-bank after having received the memo from the bank concerned, served the accused with legal notice, dated 19.11.2007 through registered AD, calling upon him to make the payment good within stipulated period. Since, the accused failed to make payment good within stipulated period despite issuance of legal notice, complainant-bank was compelled to initiate proceedings under Section 138 of the Act, in the appropriate Court of law.

3. Learned trial Court on the basis of the evidence adduced on record by the respective parties, held accused guilty of having committed the offence punishable under Section 138 of the Act and accordingly convicted and sentenced him as per the description given hereinabove.

4. Feeling aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the learned trial court, present petitioner-accused preferred an appeal in the Court of learned Additional Sessions Judge, Solan, which also came to be dismissed vide judgment dated 31.7.2009, as a

consequence of which, judgment of conviction and sentence recorded by the learned trial Court came to be upheld. In the aforesaid background, petitioner approached this Court by way of instant Criminal Revision Petition, praying therein for his acquittal after quashing and setting aside the impugned judgments passed by learned Courts below.

5. I have heard learned counsel for the parties and gone through the record carefully.

6. Having carefully perused the material available on record, this Court is not persuaded to agree with the contentions having been made by learned counsel for the petitioner that learned court below while holding petitioner-accused guilty of having committed the offence punishable under Section 138 of the Act, has misread, misinterpreted and misconstrued the evidence adduced on record, rather this Court is convinced and satisfied that both the courts below have dealt with each and every aspect of the matter very meticulously and the judgment of conviction passed by the learned trial court and further upheld by the learned

Additional Sessions Judge, Solan is based upon the proper appreciation of evidence.

7. In the case at hand, complainant with a view to prove its case examined three witnesses i.e. CW-1, Rajesh Kerketta, CW-2, Parmod Kumar, Assistant Manager and CW-3, Maan Singh, whereas accused despite having afforded opportunity failed to lead evidence, if any, in his defence. Careful perusal of statement of the accused recorded under Section 313 Cr.P.C, clearly suggest that he admitted the factum with regard to advancement of loan to the tune of Rs. 50,000/- by the complainant-Bank at the rate of 13% interest per annum with quarterly rest at floating rate. Though, he denied that the cheque was issued in favour of the complainant, but stated that cheque was taken in advance. He further admitted while answering question No.4 that cheque issued by him was dishonoured on account of 'insufficient funds' in his account. Similarly, he feigned ignorance with regard to service of legal notice got issued by the complainant, but most importantly, he admitted the factum with regard to

issuance of memorandum Ex.CW1/B, minutes of meeting Ex.CW1/C and sanction letter Ex.CW1/D.

8. Close scrutiny of the statement of accused recorded under Section 313 Cr.P.C., clearly suggest that he admitted all the incriminating evidence emerged against him during the trial. No doubt statement, if any, made under Section 313 Cr.P.C cannot be a ground to convict a person, but in the case at hand, if the evidence led on record by the complainant is read in its entirety juxtaposing statement of accused under Section 313 Cr.P.C, it proves the case of the complainant beyond reasonable doubt. Accused has nowhere raised dispute, if any, with regard to issuance of cheque in question and his signature thereupon, rather he took the defence that cheque in question was taken in advance. But once factum with regard to loan advanced by the complainant-bank stands duly admitted by him, cheque, if any, taken by the complainant bank in advance cannot be a ground to conclude that cheque in question was not issued towards discharge of lawful liability of the accused.

9. CW-1, Sh. Rajesh Kerketta, Manager of the concerned bank by way of affidavit Ex.CW1/A deposed that as per minutes of the meeting Ex.CW1/C, he has been authorized to file the complaint. He also produced on record sanction letter sanctioning the loan amount Ex.CW1/D and cheque given by the accused Ex.CW1/E for a sum of Rs. 85804/-. He further stated that on presentation of this cheque, same was returned with endorsement "insufficient funds". He categorically stated that he has been authorized by the Board of Director to file complaint and he had affixed his signatures on the complaint. Cross-examination conducted upon this witness, clearly suggest that defence was not able to extract anything contrary what he stated in his examination-in-chief and as such, his testimony remain un-shattered. It stands duly proved on record that he was authorized by the bank to file complaint and complaint was filed by him on behalf of the bank to get the accused convicted. This witness also proved cheque Ex.CW1/E, letter Ex.CW1/I and notice Ex.CW1/K, whereby accused was called upon to make the payment good within stipulated period. This witness also proved on record

Ex.CW1/L i.e. postal receipt, perusal whereof, clearly suggest that complainant-bank after having received memo from the concerned bank, served the accused with legal notice Ex.CW1/K. Perusal of Ex.CW1/E i.e. acknowledgement clearly suggest that notice was received by the accused as it bears his signatures, but despite that he failed to make the payment.

10. CW-2, Parmod Kumar, Assistant Manger, deposed that cheque was sent for collection and same stands entered in the clearance register Ex.CW2/A. He also proved on record dispatch register Ex.CW2/B. CW-3, Maan Singh brought the record of the cheque i.e. Ex.CW3/A, cheque referred and returned register Ex.CW3/B and statement of account Ex. CW1. Interestingly, aforesaid witnesses CW-2 and CW-3 were not cross-examined by the accused despite opportunity given to the accused and as such, version put forth by them remained unrebutted. As has been noticed hereinabove, accused admitted all the incriminating material put to him in his statement recorded under Section 313 Cr.P.C and as such, version put forth by the complainant appears to be trustworthy and stands fully corroborated by the versions put



forth by CW-2 and CW-3. Accused in his statement recorded under Section 313 Cr.P.C stated that case was made out when he stopped making payment. He also admitted that he has not made payment to the complainant. While answering question No.12 in statement recorded under Section 313 Cr.P.C he prayed that he be given time to make the payment.

11. Close scrutiny of the material available on record, especially statement of accused recorded under Section 313 Cr.P.C, clearly suggest that accused had admitted the factum with regard to issuance of cheque towards payment of loan amount advanced by the complainant in his favour. Complainant-bank by leading cogent and convincing evidence has successfully proved on record that it after having received memo from the concerned bank, took all necessary steps as envisaged under Section 138 of the Act. In the case at hand, accused set up the defence that he had never received notice Ex.CW1/K, but learned court below rightly came to the conclusion that once factum with regard to filing of complaint under Section 138 of the Act, had come to the notice of the accused, he had an opportunity to make the payment

good qua the cheque amount. Since, there is no dispute with regard to issuance of cheque and signature thereupon of the accused, defence, if any, taken by the accused with regard to non receipt of legal notice is of no consequence, especially when factum with regard to filing of complaint under Section 138 of the Act, had come to his notice after receipt of summon issued by the learned court below.

12. Leaving everything aside, when there is no dispute with regard to issuance of cheque and signatures thereupon of the accused, statutory presumption as contemplated under Sections 118 and 139 of the Act, is available in favour of the complainant, who otherwise by leading cogent and convincing evidence successfully proved on record that cheque in question was issued by the accused towards discharge of his lawful liability. Section 118 of the Act, clearly envisage that it shall be presumed that until the contrary is proved the cheque was drawn for consideration, whereas Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed that holder of the cheque receives the cheque for the discharge of whole or part of any debt or liability.

13. Having carefully examined the evidence available on record, this Court sees no reason to interference with the well reasoned judgments passed by the courts below, which otherwise appears to be based upon the correct appreciation of evidence and as such, same need to be upheld. Moreover, this Court has a very limited jurisdiction under Section 397 of the Cr.PC, to re-appreciate the evidence, especially, in view of the concurrent findings of fact and law recorded by the courts below. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in case ***“State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri”*** (1999) 2 Supreme Court Cases 452, wherein it has been held as under:-

***“In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal,***

***unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”***

14. Since after having carefully examined the evidence in the present case, this Court was unable to find any error of law as well as fact, if any, committed by the courts below while passing impugned judgments, and as such, there is no occasion, whatsoever, to exercise the revisional power.

15. True it is that the Hon'ble Apex Court in ***Krishnan and another Versus Krishnaveni and another, (1997) 4 Supreme Court Case 241***; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order, but Mr. Ashok Kumar, learned counsel representing the accused has failed to point out any material irregularity committed by the courts below while appreciating the evidence

and as such, this Court sees no reason to interfere with the well reasoned judgments passed by the courts below.

16. Consequently, in view of the discussion made herein above as well as law laid down by the Hon'ble Apex Court, this Court sees no valid reason to interfere with the well reasoned judgments recorded by the courts below, which otherwise, appears to be based upon proper appreciation of evidence available on record and as such, same are upheld. Accordingly, the present revision petition is dismissed. Order dated 23.4.2010, passed by this Court, whereby sentence imposed by the court below was suspended, is hereby vacated and the petitioner is directed to surrender himself before the learned trial Court forthwith to serve the sentence as awarded by the learned trial Court.

**(Sandeep Sharma),  
Judge**

**31<sup>st</sup> July, 2018**  
(shankar)