

2025:PHHC:061802



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-2161-2024 (O&M)
Date of Decision: 12.05.2025**

Lakhan ...Petitioner
Versus
Rajesh Kumar and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. P.S. Jammu, Advocate with
Mr. Pardeep Kamboj, Advocate
for the petitioner.

Mr. P.S. Khurana, Advocate
for respondent No. 1.

Mr. Rubal Pawar, AAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The present revision petition has been preferred against the judgment dated 10.10.2024 passed by the Court of Additional Judge, Fast Track Court, Ferozepur and the judgment and order dated 04.12.2023 passed by the Court of Judicial Magistrate 1st Class, Ferozepur, whereby, the present petitioner has been convicted for the offences punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and has been sentenced as under:-

(i) Under Section 138 of Negotiable Instruments Act 1881 convict shall undergo rigorous imprisonment for a period of one year.

(ii) Under Section 357(3) Cr.P.C. the conviction shall pay compensation to the complainant to the tune of cheque amount alongwith interest @ 9% per annum from the date of issuance of cheque till today.”

2. Learned counsel for the petitioner contended that the story put-forth by the respondent No.1/complainant was completely false and fabricated. The petitioner had never worked as an immigration advisor as alleged in the complaint nor any amount of Rs.8 lacs was paid by the respondent No.1 to him. In fact, the petitioner was working as an agent of the Crown Group of Companies, which was headed by Jagjit Singh, Managing Director, and the amount of Rs.5 lacs was allegedly invested by the respondent No.1 in the said company. The petitioner was only an agent of the company and the respondent No.1 pressurized and threatened him to issue the cheque in question. Being helpless, the petitioner had issued two security cheques in favour of respondent No.1, which were blank, however, duly signed by the petitioner. The respondent No.1 filled one of the cheque and presented the same to the bank for encashment without his mandate. Learned counsel for the petitioner further argued that the cheque was issued by the petitioner as security and it was never meant to be presented in the bank for encashment nor any outstanding liability was there. The respondent No.1 was under a

legal obligation to prove the liability against the petitioner and it was to be proved conclusively that the cheque was duly supported by some consideration. Apart from that, both the Courts had completely overlooked the defence evidence led by the present petitioner. In fact, the law is well settled that the defence evidence has to be treated at par with the prosecution evidence and cannot be likely brushed aside. The Courts misappreciated the defence evidence and wrongly convicted the petitioner in the present case. Learned counsel for the petitioner further submitted that it is highly unbelievable that respondent No. 1 had handed over a sum of Rs. 8 lacs to the present petitioner, without going in for execution of some document by the borrower. Even, the respondent No.1 had no financial capacity to offer such a huge amount to the petitioner as he failed to show any document in support of the same. Further, the Courts failed to appreciate that the ink of signature was quite different from the ink of other body writing of the cheque and it was visible from the naked eye that the cheque was not filled by the petitioner. Thus, the impugned judgments are based on misappreciation of fact and law and are liable to be set-aside by this Court.

3. On the other hand, learned counsel appearing on behalf of the respondent No.1 submitted that both the Courts had examined the evidence led by both the parties in detail and after due appreciation of evidence, the petitioner was rightly convicted by the

Courts. Even, both the Courts had recorded the concurrent findings of fact, which were duly supported by various pronouncements made by the Hon'ble Apex Court as well as this Court and this Court should not normally interfere in the said judgments. Apart from that, at this stage, the petitioner had failed to point out any irregularity or patent illegality in both the impugned judgments and the revision is liable to be dismissed. Further, the petitioner had himself admitted his signatures on the cheque and had admittedly issued the cheque in question. Now, he is raising an illogical argument that the ink of signatures is different from the ink of other body writing. In fact, no adverse inference can be drawn against the respondent No.1 on this ground when the signatures on the cheque are admitted by the petitioner himself. Still further, the petitioner only proved on record his identity card of the Crown Group of Companies and also placed reliance on various affidavits executed by Jagjit Singh, Managing Director of the Crown Group of Companies. However, the defence evidence does not show in any manner that any investment was made by the respondent No.1, in favour of the said company through the present petitioner. Rather a half baked defence has been taken by the petitioner to disprove the criminal liability which otherwise stood established by way of credible evidence.

4. I have heard learned counsel for the parties and perused the record carefully.

5. Before proceeding any further, this Court would highlight the basic ingredients of the offence under Section 138 of the Act, which was brought on the statute book to enhance the acceptability of cheques in various commercial transactions. At the same time, a provision was made to provide for adequate safeguards to prevent the harassment of honest drawers through painting the liability arising out of dishonour of a cheque with a punitive brush. Section 138 of the Act has been reproduced below for the ready reference:-

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability”.

As per the provisions of Section 138 of the Act, the three basic ingredients ought to be fulfilled, before the accused can be prosecuted for commission of the offence under Section 138 of the Act. First of all, the cheque ought to have been presented within the period of its validity. Secondly, the presenter of the cheque made a demand to the issuer of the cheque within the statutory period provided under the Act and, thirdly, the drawer/issuer of the cheque had failed to pay the amount within a period of 15 days of the receipt of the demand. In the present case, the cheque (Ex.C-1) for a sum of Rs.5,00,000/- dated 24.11.2020 was returned dishonoured by the bank vide memo dated 26.11.2020 (Ex.C-2) with the remarks “account

closed”. The legal notice (Ex.C-3) was issued to the petitioner/accused vide postal receipt dated 02.12.2020 (Ex.C-4). Despite the issuance and receipt of the legal notice, the petitioner did not make the payment to the respondent No. 1 within the stipulated period of 15 days of receipt of notice and, thus, the basic ingredients of the offence under Section 138 of the Act were fulfilled. Moreover, it is an admitted fact that the cheque (Ex.C-1) was bearing the signatures of the petitioner and it was dishonoured on account of reason “account closed”, which stood proved in the present case.

6. Proceeding further, once the basic ingredients stood proved, the reverse onus was on the petitioner to prove that there was no liability which was to be discharged. The main argument raised on behalf of the petitioner is that the petitioner had never acted as an immigration agent and rather he was working as an agent for Crown Group of Companies. To prove his defence, the accused had referred to the following documents:-

<i>Sr. No.</i>	<i>Exhibit</i>	<i>Nature</i>
1.	<i>Ex.D4</i>	<i>Copy of identity card of accused Lakhan being agent of Crown Credit Coop. Society Ltd.</i>
2.	<i>Ex. D5</i>	<i>Copy of order dated 04.03.2016 passed by Hon’ble High Court in CRM M-7175-2016.</i>
3.	<i>Ex.D6</i>	<i>Copy of registration certificate of Crown Credit Coop. Society Ltd.</i>
4.	<i>Ex.D7</i>	<i>Copy of affidavit given by Jagjit Singh before Hon’ble High Court.</i>
5.	<i>Ex.D8</i>	<i>Details of balance maintained by Crown Credit Coop. Society Ltd.</i>

6. *Ex.D9 Investment details of Big Investment Advisory Ltd.*
7. *Ex.D10 List of Board of Directors*
8. *Ex.D11 Copy of affidavit dated 28.09.2016 given by Jagjit Singh before Hon'ble High Court*
9. *Ex.D12 List of subsidiary companies of Crown Credit Coop. Society Ltd.*
10. *Ex.D13 Copy of order dated 21.09.2016 passed by Hon'ble High Court in CRM M-7175-2016.*
11. *Ex.D14 Copy of affidavit dated 28.04.2016 given by Jagjit Singh before the Hon'ble High Court.*
12. *Ex.D15 Copy of order dated 04.03.2016 passed by Hon'ble High Court in CRM M-7175-2016.*

7. However, this Court agrees with the findings recorded by both the Courts that the aforesaid exhibits do not depict any investment being made by the respondent No.1 in favour of the Crown Group of Companies through the present petitioner. He had only made unsubstantiated assertions in his defence that the blank signed cheque was given to the respondent No. 1 as a security and no credible and probable evidence was led by the petitioner to prove the said defence. Rather the petitioner has taken a false defence in the present case, which further lends credence to the case set up by the respondent No.1/complainant.

8. Even otherwise, I have considered the submissions made by both the sides and have carefully perused the trial Court record. The petitioner has failed to point out any irregularity, patent illegality or any other misappreciation of evidence in the impugned judgments

passed by both the Courts and the impugned judgments require no interference.

9. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of **Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288)** as follows:-

*“14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed in **Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974.***

The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order

of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

10. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62: 1996 CrilJ 2867**, this Court observed as under:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the

trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question is the negative the order of acquittal is not to be disturbed."

11. In view of the above discussion, I find no infirmity or illegality in the impugned judgment dated 10.10.2024 passed by the Court of Additional Judge, Fast Track Court, Ferozepur and the judgment and order dated 04.12.2023 passed by the Court of Judicial Magistrate 1st Class, Ferozepur, and the present revision petition being meritless, is ordered to be dismissed.

12. Pending application(s), if any, also stand disposed off accordingly.

12.05.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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