2025:PHHC:117070

S. No.122

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR No.2096 of 2025
Date of Decision:28.08.2025

Tinku **.....Petitioner**

Vs.

State of Haryana and another **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Kewal Singh, Advocate for the petitioner.

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Yashvir Singh Rathor, J. (Oral)

1. This revision petition is directed against the judgment dated 04.07.2025 passed in **Criminal Appeal No.30 of 2019 – Tinku Vs. Ashok Kumar,** vide which appeal instituted against the judgment dated 05.02.2019 and order of sentence dated 06.02.2019 passed by learned Additional Chief Judicial Magistrate, Jind in **Criminal Complaint No.270-2 of 2014** vide which revisionist was held guilty and convicted for the offence under Section 138 of the Negotiable Instrument Act and sentenced to undergo rigorous imprisonment for a period of one year besides payment of fine of Rs.3,25,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three months', was dismissed and the judgment passed by Ld. Additional Chief Judicial Magistrate was upheld and affirmed.

2. I have heard learned counsel for the revisionist and have gone through the material on file.

3. As per version of complainant, he had family relations with the accused who took a loan of Rs.3 lakhs from him in November, 2013 and promised to repay the same as and when demanded. When complainant demanded back the loan amount, he issued a cheque dated 25.09.2014 for a sum of Rs.3 lakhs drawn at UCO Bank, Jind but on presentation, the cheque was dishonored due to "Account Closed" vide bank Memo dated 07.10.2014. Thereafter, complainant served a legal notice dated 16.10.2014 upon the accused through his counsel but no payment was made. After the accused was summoned, the complainant led his evidence and besides examining himself as CW1, he tendered in evidence affidavit Ex.C1, cheque Ex.C2, bank return memo Ex.C3, postal receipt Ex.C4 and legal notice Ex.C5. Thereafter, statement of accused under Section 313 Cr.P.C was recorded and accused in his defence tendered documents i.e. attested copy of complaint under Section 420/406 IPC filed by him against complainant Ex.D1, attested copy of his statement recorded in that complaint Ex.D2, attested copy of statement of CW2 Surender Redhu, Clerk as Ex.D3, attested copy of postal receipt Ex.D4, attested copy of statement of account Ex.D5, copies of bank certificate regarding close bank account as Ex.D6 and Ex.D7 and accused closed his evidence in defence.

4. After hearing learned counsel for the parties, accused was held guilty and convicted under Section 138 of the NI Act and sentenced to undergo imprisonment as mentioned in opening paragraph of the judgment. The appeal filed by the revisionist was also dismissed and feeling aggrieved, present revision petition has been instituted.

5. It is well settled that the powers of High Court to re-appreciate evidence in a criminal revision are very limited and the Court generally cannot re-

examine the evidence as the Appellate Court does. Revisional power can be exercised only to ensure the legality, propriety and correctness of the orders passed by the trial Magistrate and to prevent gross miscarriage of justice, such as a patent error of law or procedure or a perverse finding of fact. The High Court can re-appreciate the evidence only to correct blatant procedural flaws or manifest errors of law which may have resulted in grave miscarriage of justice, not simply because a different view of the evidence is possible. The High Court has jurisdiction under Section 397 Cr.P.C as a supervisory power to examine the record of any inferior criminal Court to satisfy itself about the legality, correctness, or propriety of any finding, sentence or order. It is also well settled that interference in a revision petition is warranted only when the decision is grossly erroneous, in non-compliance with the provisions of law, based on a finding of fact which is not supported by evidence or if the judgment is perverse or arbitrary.

6. Coming to the facts of the case in hand, it is not in dispute that the cheque Ex.C2 bears the signature of accused and the same was presented for encashment within the stipulated period of its validity and it was dishonored as the account was found to be closed vide bank memo dated 07.10.2024 Ex.C3. Thereafter, legal notice dated 16.10.2024 was issued calling upon the accused to pay the amount within 15 days but there was no response and thereafter, the complaint in hand was instituted within the prescribed period of limitation.

7. The defence taken by the accused was that he had had lost the cheque book which contained his blank signed cheque in November, 2013 and on 13.11.2013, he closed his bank account and since he had already closed the bank account on 13.11.2013, there was no occasion for him to issue the cheque on

25.09.2014 and his blank cheque has been misused by the complainant and that he never issued any cheque in discharge of his legal debt or liability.

8. Learned trial Court in order to deal with the pleas raised by the accused held as under:-

> "10. The first question arising for consideration is with regard to execution of cheque. The word "cheque" has been inclusively defined under Section 6 NI Act to include a `bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand…" The word "bill of exchange" has been defined in Section 5 NI Act as "in instrument in writing containing an unconditional order, *signed by the maker,* directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument." The expression 'negotiable instrument' has been defined in Section 13 NI Act as meaning a "promissory note, bill of exchange or cheque payable either to order or to bearer.
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> 11. XX XX XX XX XX
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> 12. It is well settled principle of law that once the execution of the cheque stands duly proved or admitted, the holder of cheque in due course is entitled to rely upon the presumption raised in his favour by virtue of Section 118 and 139 of the Act and the court must presume that the cheque was issued by its drawer for consideration and in discharge of his existing debt or liability. The said presumption is a rebuttable presumption and the burden to rebut the same squarely lies upon the accused who may rely upon evidence emanating from the

cross-examination of the complainant or may lead his own independent evidence (see ratio laid down by Hon'ble Apex Court in ***Hiten P. Dalal Vs. Bratindra Nath Banerjee 2001(3) RCR (Criminal) 460 for the said purpose.***"

9. The learned trial Magistrate on appreciation of the evidence on file came to the conclusion that the accused has admitted his signatures on the cheque and the word "cheque" occurring in Section 138 of the Act includes a blank cheque which is signed by the drawer with the material particulars left unfilled at the time it was handed over to the payee and even if the material particulars are subsequently filled up and presented for payment, such a cheque takes the same liability. While holding so, learned trial Magistrate relied upon the judgment dated 20.04.2012 passed by Delhi High Court in the case of **Crl. M.C.1325/2012 – Ravi Chopra Vs. State and another;** judgment of the Division Bench of the Kerala High Court in **2003(2) DCR 610 – Lillykutty Vs. Lawrance** and a judgment of this Court in **2012(2) RCR (Cri) 306** – **Gurmeet Singh Vs. State of Haryana**, and held that the payee is entitled to fill up the details including the amount, date and other particulars if the cheque has been duly signed by the accused and he cannot escape his liability and once the execution of cheque is duly proved, the holder of cheque in due course is entitled to rely upon the presumption raised in his favour by virtue of Section 118 and 139 of the Act and it has to be presumed that the cheque was issued by the drawer for consideration and in discharge of his existing debt or liability. Though the said presumption is rebuttable yet onus lies upon the accused to rebut the same.

10. The learned trial Magistrate further held that mere closure of the account on an earlier date cannot be considered as a conclusive proof of the fact

that cheque pertaining to such an account cannot be used by account holder at any future date. Whether any such cheque was indeed issued by the accused after closure of the bank account or not, is not a matter of mere presumption. The accused has raised a defence that he had kept bank cheques with himself in his cheque book but he has failed to explain as to why he had kept blank cheques in his cheque book and no prudent and reasonable man can be expected to keep a blank signed cheque at his own. No explanation has also been given regarding the circumstances under which he had lost the cheque book and no details regarding the suspected time or place regarding the loss of cheque have also been disclosed and learned trial Magistrate came to the conclusion that the accused has failed to rebut the presumption by leading any cogent and convincing evidence.

11. Regarding filing of criminal complaint Ex.D1 accused against complainant, it was held that accused appeared in the complaint under Section 138 of the Act on 09.12.2015 after he was summoned to face the trial but he instituted the complaint under Section 420/406 IPC Ex.D1 on 05.07.2017 after a lapse of 22 months and such a delay in filing the complaint goes to show that it was a result of an after-thought and was not worth acceptance. It was further held that accused has failed to probablise his defence and it can thus be presumed that cheque in question was issued by the accused in favour of complainant in discharge of his legal debt or liability.

12. Regarding issuance of notice Ex.C4, it was held that same was sent to the accused at his correct address and once a letter is sent through registered post at the correct address, it shall be presumed to have reached the addressee in view of Section 27 or Section 114 of Evidence Act. This presumption is also rebuttable but accused has failed to rebut the same by leading any cogent and convincing

evidence and it is not his case that the address mentioned in the notice is not correct.

13. Learned trial Magistrate thus rightly came to the conclusion that the accused had issued the cheque in discharge of his existing debt or liability and the same was dishonored as he had closed the account and he also failed to pay the amount despite notice issued to him within the stipulated period and rightly held him guilty and convicted under Section 138 of the NI Act. Learned Appellate Court has also affirmed the finding of the trial Magistrate by appreciating the evidence in the correct perspective and no interference in the revision petition is thus called for particularly because the judgments under challenge do not suffer from any illegality or impropriety. Proper procedure too has been followed while deciding the complaint and the findings are supported by cogent and convincing evidence and the impugned judgments do not suffer from any illegality much less perversity and the same are not liable to be interfered with. Resultantly, the revision in hand is dismissed.

(Yashvir Singh Rathor)
Judge

August 28, 2025
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Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No