

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

108+262

2025:PHHC:114956



CRR-54-2025 (O&M)

Date of decision: 25.08.2025.

RAM NATH

...Petitioner(s)

VERSUS

DHARINDER KUMAR SABHERWAL AND ANOTHER

...Respondent(s)

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

Present :- Mr. Mirtunjai Dutt, Advocate, (Legal-aid-counsel)  
for the petitioner.

Mr. Supinder Singh Sohi, Advocate, and  
Mr. Kulvir Singh Beniwal, Advocate,  
for respondent No.1.

**VINOD S. BHARDWAJ, J. (Oral)**

The instant revision petition has been filed by the petitioner against the judgment of conviction and order of sentence dated 29.01.2024 passed by the Judicial Magistrate First Class, Nangal, Rupnagar, sentencing the petitioner to undergo simple imprisonment for a period of 01 year for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 and the judgment dated 05.12.2024 passed by the Additional Sessions Judge, Rupnagar in the criminal appeal preferred by the petitioner whereby the conviction of the petitioner has been upheld.

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At the time, when the matter came up for preliminary hearing,

contention of the counsel for the petitioner was noticed by this Court in its order dated 31.01.2025 wherein the petitioner agreed and undertook to make the payment of the cheque amount. A sum of Rs.1,45,000/- was to be paid within a period of one week and balance amount of Rs.1,45,000/- was undertaken to be paid within a period of two months from 31.01.2025. Accordingly, the sentence of the petitioner was suspended to enable him to make the payment. It was also made clear in the said order that in case the payment was not made, the interim order shall be withdrawn.

3           It is also evident from a perusal of the subsequent proceedings and orders that an amount of Rs.1,45,000/- was handed over to the counsel for the respondent No.1 vide demand draft dated 21.02.2025. The matter was thereafter sent to the Mediation and Conciliation Centre of this Court for exploring the possibility of amicable resolution of the dispute. On the next date of hearing, i.e. 27.03.2025, there was no representation on behalf of the petitioner. The matter was thus adjourned to 21.04.2025 and a direction was issued to the Registry of this Court to inform the counsel for the petitioner about the next date of hearing. On the adjourned date of hearing, learned counsel for the petitioner prayed for some time to verify whether the payment has been made or not. The hearing was thus deferred to 01.05.2025. A similar order was passed on the said date as well and the matter was adjourned yet again to 22.07.2025. On the adjourned date, the contention of the counsel for the respondent was specifically recorded to the effect that the petitioner had violated the order dated 31.01.2025.

4           In light of the said statement, which remains uncontroverted, the interim order dated 31.01.2025, suspending the sentence of the petitioner,

was recalled and the petitioner was directed to surrender before the Chief Judicial Magistrate, Rupnagar, within a period of two weeks. The matter was adjourned to 07.08.2025, however, no one entered appearance on behalf of the petitioner. The matter was thus adjourned for today.

5 Today, the matter has been called twice, however, no one has appeared on behalf of the petitioner and the Court has also received a report from the District and Sessions Judge, Rupnagar, that the petitioner has not surrendered before the Trial Court despite a specific order passed by this Court. Further wait in the matter would not be justified. This Court thus deems it appropriate to decide the petition after appointing a legal aid counsel.

6 Sh. Mritunjai Dutt, Advocate, has been appointed as a legal aid counsel to assist this Court. He has gone through the Court file as well as the orders above. It is argued by the legal aid counsel appearing on behalf of the petitioner that the Courts below have failed to appreciate the defence of the petitioner. He contends that the payment in question was made by the respondent No.1's daughter-in-law, Shallu, to the petitioner but no complaint had been filed by her against the petitioner. Hence, the complaint at the instance of respondent No.1 is not maintainable. He further argues that even though respondent No.1 had contended before the trial Court as well as the appellate Court that he had been maintaining the account of his daughter-in-law, however, no documentary evidence was adduced before the Court to establish that he was authorized by his daughter-in-law to maintain the said bank account. Hence, respondent No.1 had no locus standi to file the complaint. He submits that the respondent No.1-complainant neither

produced the daughter-in-law as a witness to prove that any amount had been advanced to the petitioner nor did he prove that an authority had been conferred upon him to institute the said complaint. He submits that the daughter-in-law of respondent No.1 is a Financier and she had paid money to the petitioner. The same had duly been returned to her in cash, however, she misused the cheque that was given as security to her by the petitioner and now the same was used as an arm-twisting device out of greed.

7 He further contends that there is no evidence on record to establish that respondent No.1 was the holder of the cheque in due course or that the said cheque has been issued in discharge of any legally enforceable debt. In the absence thereof, the proceedings against the petitioner could not have been instituted. He submits that the petitioner is more than 62 years old and has three daughters and a son. He contends that two of his daughters are residing with him and are dependent upon him. Hence, he prays that the said aspect be taken into consideration.

8 Counsel for the respondent No.1-complainant contends that all the aforesaid aspects have already been considered by both the Courts and the arguments raised above have not only been rejected by the trial Court but also by the Appellate Court. He submits that there should not be a re-appreciation of evidence by the High Court in a revisional jurisdiction and unless any illegality, perversity and impropriety is reflected, the judgments passed against the petitioner, convicting him for the commission of an offence under Section 138 of the Negotiable Instruments Act, may not be set aside. He further submits that the petitioner has failed to show his bona fide and that despite having made a specific statement before this Court to make

the payment and having availed the benefit of suspension of sentence vide order dated 31.01.2025, the compliance was not made and therefore, the petitioner does not deserve any concession by this Court.

9 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended with the present petition.

10 It is evident from the judgments under challenge, passed by both the Courts, that the petitioner had availed a loan of Rs.2,90,000/- for his domestic needs from the complainant and in discharge of his legally enforceable debt, the cheque in question was issued. On presentation of the said cheque issued by the State Bank of India, Branch Adda, Nangal, the same was dishonoured by memo dated 09.02.2021 with remarks "funds insufficient". Despite the legal notice being served, the amount in question was not paid. Consequently, the complaint in question was filed before the trial Court. It was also noticed that during the cross-examination of the complainant, the petitioner-accused did not deny receipt of the amount of Rs.2,90,000/- from the respondent-complainant. Hence, the issuance of the cheque in lieu of the legally enforceable debt stood established. Therefore, the presumption under Section 139 of the Negotiable Instruments Act, 1881 was invoked.

11 As per the defence, the specific plea of the petitioner is that he had repaid the entire amount in cash, hence, the burden fell upon the petitioner to discharge his onus that he had paid money against the liability. However, he failed to adduce any evidence in this regard. It was further noticed that the petitioner-accused nowhere denied the fact that the sum of

Rs.2,90,000/- was transferred in his account from the account of Shalu, daughter-in-law of the complainant, hence, the version of the petitioner was disbelieved and the presumption in favour of the respondent-complainant was held as having been satisfied.

12           The fact that the amount in question has been transferred by the respondent-complainant from his daughter-in-law's account does not mean that the respondent cannot initiate proceedings against the petitioner. Cheques are transferrable instruments and complaint can be filed either by the payee or the holder in due course. Besides, there is a presumption in law that a holder of cheque is presumed to be a holder of cheque in due course unless proved otherwise. In the absence of Shalu challenging the competence of the complainant to institute the present proceedings, he is entitled to the legal presumption of being the holder of the cheque in due course in his favour. It is also not the case of the petitioner that no amount had ever been received from the account of the daughter-in-law of the respondent-complainant herein, thus there is no occasion for this Court to conclude that the aforesaid amount of Rs.2,90,000/- has not been transferred by his daughter-in-law on the asking of and on the request of the petitioner herein. Since the transfer of the said amount was on account of the interpersonal relationship between the petitioner and the respondent No.1-complainant, hence, the source of such funding is immaterial to the petitioner as his relationship of borrowing a friendly loan was with respondent No.1-complainant himself.

13           Considering it from either of the angles, I do not find that there is any illegality or perversity in the judgments passed by both the Courts.

Further, the High Court in its revisional jurisdiction does not sit as a Court of appeal to substitute the findings recorded by the Courts below. In case the view, as affirmed by the Courts, is a probable view on the basis of appreciation of evidence, the same would ordinarily not be interfered with. Consequently, finding no merit, the instant revision petition is dismissed.

14 Let a copy of this order be also sent to the High Court Legal Services Committee for necessary action and for payment of the fee to the legal aid counsel appointed today in the Court.

15 Since the payment has not been made despite the undertaking given by the petitioner and despite opportunities having been granted to him, the application for compounding of the offence is also dismissed.

16 Any other pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

17 A copy of this order be also sent to the High Court Legal Services Committee, for further necessary action.

August 25, 2025.  
raj arora

(VINOD S. BHARDWAJ)  
JUDGE

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