

(2009) 03 P&amp;H CK 0230

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Pardeep Kumar

APPELLANT

Vs

Manoj Gupta

RESPONDENT

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**Date of Decision:** March 4, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2010) 3 BC 303 : (2010) 2 CivCC 426 : (2010) 2 RCR(Criminal) 86**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J**Bench:** Single Bench

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**Judgement**

Kanwaljit Singh, J.

Present revision petition has been filed by Pardeep Kumar resident of D-151, Industrial Area, Phase-I, Mohali, District Ropar. In the present revision petition, two legal questions have been raised, (i) whether an Attorney of the firm, who had drawn the cheques, can be held responsible and guilty of the offence without impleading the firm and proprietor of the firm as an accused, and (ii) whether, without any averment made to the effect that Attorney was incharge of the affairs of the firm and was responsible for day-to-day affairs, can he be convicted u/s 138 of the Negotiable Instruments Act in view of ratio of law laid down by Hon"ble Apex Court in K. Srikanth Singh v. North East Securities Ltd. and Anr. III (2007) DLT (Crl.) 730 (SC) : IV (2007) BC 376 (SC) : III (2007) CCR 264 (SC) : 2007(3) RCR (Criminal) 934.

2. Before these questions are taken into consideration and answered, brief facts of the case can be gathered.

3. Four cheques amounting to Rs. 40,000/- were issued in favour of Manoj Gupta. The cheques have been exhibited as Annexure P-1 to P-4 by PW-2 Tejinder Singh Clerk. A perusal of cheques will show that they have been drawn for Shreekanta Udyog and petitioner Pardeep Kumar has signed the same as a Proprietor/Attorney.

These cheques had bounced. Notice (Annexure P-5) was issued by the complainant. The notice has been issued by R.K. Joshi, Advocate, Civil Courts, Ambala City. Notice has been issued to Mrs. Janak Gupta, Proprietor, M/s. Shree Kanta Udyog, 928, Phase IV, SAS Nagar, Mohali, District Ropar and to Pardeep Kumar, Attorney, Mrs. Janak Gupta, resident of D-151, Eltop, Phase 8, SAS Nagar, Mohali, District Ropar. Notice says that addressee Nos. 1 and 2 are closely related to the client of the Counsel issuing notice and amount was taken for some financial assistance for improvement of the business by the addressee. It was stated that transaction was a family transaction.

To decide the controversy, it will be essential to reproduce the entire notice, which reads as under:

From the office of:

R.K. Joshi, Advocate,  
Civil Courts, Ambala City, To

1. Mrs. Janak Gupta,  
Prop. M/s. Shree Kanta Udyog,  
928, Phase IV, S.A.S. Nagar,  
Mohali, District Ropar.

2. Shri Pardeep Kumar, Attorney  
Mrs. Janak Gupta,  
R/o D-151-Eltop  
Phase 8, S.A.S. Nagar, Mohali,  
District Ropar.

Subject : Notice u/s 138 of Negotiable Instruments Act Amended Upto Date.

Dear Sirs,

I have been instructed and authorized by my client Shri Manoj Gupta son of Shri K.C. Kansal, resident of H. No. 767, Jiwan Nagar, Model Town, Ambala City, to serve upon you a notice u/s 138 of Negotiable Instruments Act, under registered/A.D. cover which I do as under:

1. That you the addressee Nos. 1 and 2 are closely related to my client and you approached my client to provide him some financial assistance for the improvement of their business and my client was pleased to accede your genuine demand.
2. That my client paid you huge amount on different occasions as and when demanded by you from time-to-time and you also promised to return the said amount on demand to my client.
3. That the said transaction was family transaction and was absolutely in good faith.

4. That you issued the following cheques:

(1) No. 0784513 dt. 10.11.1989 for Rs. 10,000/- payable at Vijay Bank, Chandigarh.

(2) No. 0784535 dt. 15.3.1990 of Rs. 10,000/-.

(3) No. 0784565 dt 20.3.1990 of Rs. 10,000/-.

(4) No. 0784566 dt. 31.3.1990 of Rs. 10,000/-.

5. That the above said cheques duly signed by the addressee No. 2, the Attorney of the addressee No. 1 and were issued in favour of my client.

6. That my client presented the said cheques in the Bank, Vijay Bank, at Chandigarh for encashment on 9.6.1990 but to the great surprise of my client all the said cheques were dishonoured by the Bank with the Remarks "Refer to drawer".

7. That all the said cheques were returned by the Bank unpaid because of the amount nil in the Account of the Addressees.

8. That you have committed offence by giving false cheques fully knowing that there was no sum in your Account and, thus, have cheated my client and have also committed offence under the Negotiable Instruments Act.

I, therefore, call upon you to make the payment of Rs. 40,000/- the amount of the cheques which have been issued by you and have been dishonoured by the Bank, within a period of 15 days from the date of receipt of this notice, failing which my client shall be constrained to institute a criminal complaint against you in the competent Court of law and in that event you shall be liable for all his costs and expenses. Please take notice.

A copy of the notice has been retained in my office for further reference.

Sd/-

(R.K. Joshi) Advocate

4. When the complaint was filed, it not only contained improvements but different version than the notice. Complaint has been filed against Pardeep Kumar only. It was stated therein that due to close relations, amount was given as financial assistance to accused Pardeep Kumar. It was further stated that cheques were presented to the Bank on 9th June, 1990 and the payment was refused by the Bank with remarks "Refer to drawer", which means that sufficient funds were not in the accounts of the issuer of the cheques. Accounts statement of the Bank has been proved as Ex. PW5/A. This reflects the account of M/s. Shree Kanta Udyog.

5. In the complaint filed, it has nowhere been stated whether M/s. Shree Kanta Udyog is a proprietary concern or a partnership business. What is the relation of the petitioner with the firm has also not been disclosed. Whereas in the notice issued, it was specifically stated that amount was given as financial assistance to the

addressees, which included proprietor of the firm. Neither the proprietor of the firm nor the firm has been impleaded as accused. Manoj Gupta appeared in the Court as PW-1. He stated that accused had borrowed the amount. Accused is son of real sister of mother of the complainant. PW-2 Tejinder Singh had proved the cheques and Bank account. Accused was examined u/s 313, Cr.P.C. He has specifically stated that he had issued all the four post-dated cheques on behalf of M/s. Shree Kanta Udyog. In the statement recorded u/s 313, Cr.P.C, it has not been put to accused whether he was a proprietor or a partner of the firm, therefore what was the concern of the petitioner with the firm, no opportunity has been given to the petitioner to explain this aspect.

6. At this stage, Counsel for the accused has brought to my notice that Rs. 40,000/- was deposited by the petitioner on 7th November, 1997 vide receipt No. 7, in the Registry of this Court. The Additional Registrar (Judicial) has given a notice that amount of Rs. 40,000/- has been deposited in the Cash Branch of the Court.

7. It has been further submitted that on an application filed, this Court had passed the following order, on 1st April, 1999:

An amount of Rs. 40,000/- presently lying in this Court shall be withdrawn from that "head of account" and deposited in the fixed deposit for a period of three years in the name of this Court. Period of fixed deposit shall be co-terminus with the life of Criminal Revision No. 1036 of 1997. Fixed deposit receipt shall be got renewed likewise. This disposes of Criminal Misc. No. 9575 of 1999.

8. Counsel for the parties are in agreement that in case the amount is disbursed to the complainant and over and above, 9% interest is paid by the petitioner, then the sentence awarded upon the petitioner be reduced to already undergone.

9. Petitioner and the complainant are closely related, as noticed earlier. Therefore, the request of the Counsel for the parties is accepted. The amount deposited in the Registry, which was subsequently kept in fixed deposit, be disbursed to the complainant, along with interest accrued upon the FDR. As agreed, petitioner is entitled to amount of Rs. 40,000/- @ 9 per cent p.a. interest, from the date of issuance of cheques till payment is received by the complainant. Therefore, interest accrued on FDR shall be adjusted and the balance amount of interest shall be paid to the complainant by the accused petitioner.

10. The difference in the interest be paid to the complainant within three months, failing which complainant will be at liberty to approach this Court. On payment of interest amount, sentence awarded upon the petitioner shall be reduced to already undergone.

11. With these observations, present revision petition is disposed of.