**(2018) 08 P&H CK 0100**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Revision No 1385 of 2018 and CRR No. 1412 of 2018

Mohit Bansal APPELLANT

Vs

M/s Ankit Polyweave Industry RESPONDENT

**Date of Decision :** 08-08-2018

**Acts Referred:**

Negotiable Instruments Act, 1881 — Section 138
Code of Criminal Procedure, 1973 — Section 313

**Citation :** (2018) 08 P&H CK 0100

**Hon'ble Judges :** RAJBIR SEHRAWAT, J

**Bench :** Single Bench

**Advocate :** Lakshay Bajaj, Virendra

# Judgement

This order shall dispose of two revision petitions bearing CRR No. 1385 of 2018 and CRR No. 1412 of 2018; as both the petitions have arisen from

the common judgment and order dated 21.3.2018, passed by the Sessions Judge, Bhiwani, whereby, he has dismissed the appeal of the petitioner while

upholding the judgment and order dated 24.11.2017, passed by the Judicial Magistrate First Class, Bhiwani, convicting the petitioner under Section 138

of the Negotiable Instruments Act, 1881 and sentencing him to undergo simple imprisonment for one year with award of compensation to the

complainant equivalent to the cheque amount in each of these petitions.

Although, initially, two complaints were filed by the complainant for dishonour of two cheques. However, the facts are almost similar in both the

cases. Therefore, for reference, the facts as involved in CRR No. 1385 of 2018, are taken up for consideration.

Brief facts of this case are that the complainant M/s Ankit Polyweave Industry filed a complaint against the present petitioner and his firm under

Section 138 of the N.I. Act. It was averred in the said complaint that the present petitioner visited the complainant at Bhiwani and purchased goods

from him. In lieu of those goods, as part payment of consideration, the petitioner handed over a cheque bearing No. 990230 dated 4.12.2014 amounting

to Rs.1,62,000, drawn on State Bank of India, Delhi. The complainant deposited the cheque in his bank for encashment but the same was returned

with remarks â??Insufficient Fundsâ? vide memo dated 5.12.2014. Thereafter, the complainant had given notice dated 15.12.2014 to the petitioner

and his firm demanding amount of the cheque. This notice was duly received by the petitioner. However, neither reply was given nor the cheque

amount was repaid by the petitioner or his firm. To prove his case, the complainant has led in evidence the documents showing issuance of cheque;

return of the same by bank as dishonoured; legal notice and the postal receipt for the notice having been sent to the petitioner. Besides this, Ex.C1/H

to Ex.C1/M are the invoices/bills of the goods supplied to the petitioner. Ex. CW1/N is the statement of account of the complainant; showing the

previous transactions with the present petitioner qua the supply of similar goods. Besides this, the other documents like income tax return; aadhar card;

PAN card and one sale deed were also produced in evidence. It is further recorded by the trial Court that in the statement recorded under Section 313

Cr.P.C. the petitioner himself has admitted the signatures on the cheque. But he has taken defence that the cheque was issued to the complainant as

security of advance payment for supplying the goods to him, however, those goods were never supplied by the complainant as promised. Therefore, he

has taken a stand that there was no legal enforceable liability against the petitioner.

On appreciation of the rival contentions, the trial Court convicted the petitioner and sentenced him as stated above. The trial Court held that the

complainant has succeeded in proving his entitlement to receive the money from the complainant.

Aggrieved against the judgment of conviction and order of sentence, the present petitioner filed appeal before the Sessions Judge, Bhiwani, which was

dismissed. Hence, the present petition has been filed.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner has specifically pleaded that goods were not supplied by the complainant as promised. The delivery of goods has not been proved by the complainant. It is further contended by learned counsel for the petitioner

that the bills/invoices produced in evidence by the complainant, does not bear the signatures of the petitioner as mark of having received the goods.

Therefore, the complainant has failed to prove the existing liability against the petitioner. Hence, the conviction and sentence awarded to the present

petitioner is wrong.

On the other hand, learned counsel for the complainant/respondent has submitted that the bills/invoices are the documents, which are maintained in

ordinary course of business. Same is the situation qua the accounts statement, which shows that earlier for similar supply of goods in similar manner

the payment has been received by the complainant. He has further contended that despite having admitted the signatures on the cheque, the petitioner

has failed to rebutt the case of the complainant qua supply of the goods by leading any document in evidence.

Having heard learned counsel for the parties and after perusing the record, this Court finds that the arguments raised by learned counsel for the

petitioner do not carry any weight. It has been admitted by the petitioner that he was having business dealings with the complainant. The complainant

has also proved the record of earlier transactions; qua which the payments were received by him in similar fashion. This fact is duly established from

the account statement Ex.CW1/N. Still further, the complainant has produced in evidence, the invoices/bills Ex.C1/H to C1/M, showing the delivery of

the goods to the present petitioner. These bills have also been prepared in normal course of business between the parties. Therefore, it cannot be said

that these documents were not admissible or were not genuine. Still further, a perusal of these invoices/bills show that the goods, mentioned in these

bills, have been transported to the petitioner through different transporters on different dates and in vehicles carrying different registration numbers.

The only argument raised by learned counsel for the petitioner to rebutt the validity of these bills is, that these documents do not bear the signatures of

the petitioner; as mark of having received the goods mentioned in the bills. However, even the petitioner has not led any evidence to show that such

signatures were ever put by him earlier; on any bill after having received the goods in earlier such transactions. Therefore, this Court does not find any illegality or infirmity in the order passed by the Courts below; holding that the complainant was having a legally enforceable liability against the present petitioner.

There is another aspect in the case which belies the case of the petitioner. Admittedly, the petitioner had received the legal notice after dishonour of the cheque. The categoric case of the petitioner is that the cheque in question was given as a security for advance payment for the supply of goods by the complainant to him. Had the petitioner not received the goods, as claimed to have been supplied by the complainant, then the petitioner would have expressed this fact by sending reply to the legal notice. No such reply was ever sent by the petitioner. Not only this, the Courts below are not wrong in drawing an adverse inference against the petitioner for the reasons that he has never raised any grouse against the the complainant for not having been supplied any goods despite receiving cheque. No action was ever taken by the petitioner either for seeking supply of the goods or for seeking the return of the cheque. In view of the above, this Court does not find any illegality or infirmity in the orders passed by the Courts below.

Therefore, both the petitions are dismissed.

At this stage, learned counsel for the petitioner has submitted that since the petitioner has been convicted for defaulting in, otherwise, a regular business dealing, therefore, the sentences awarded to the petitioner in these two cases be ordered to run concurrently.

This Court find substance in the argument of the learned counsel for the petitioner. Admittedly, there have been regular business dealings between the parties. Therefore, although the petitioner might have faltered in his business liabilities and therefore, incurred the punishment of sentence, as awarded by the Court, yet it would be appropriate if the sentences awarded to the petitioner in both the cases are ordered to run concurrently. Accordingly, it is ordered that the sentences awarded to the petitioner, as involved in both the petitions, shall run concurrently.

Photocopy of this order be placed on the connected case file.