

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL
ON THE 24th OF JANUARY, 2023
CRIMINAL REVISION No. 4701 of 2022**

BETWEEN:-

**BHAGWAT PRASAD PARASHAR, AGED
ABOUT 56 YEARS, OCCUPATION: SOCIAL
WORKER SONY COLONY GUNA (MADHYA
PRADESH)**

.....PETITIONER

**(BY MS. SANGEETA PACHORI – LEARNED COUNSEL FOR
PETITIONER)**

AND

- 1. AJENDRA BAIS S/O BALMUKUND SINGH
BAIS, AGED ABOUT 62 YEARS,
OCCUPATION: RETIRED HANUMAN GALI
GUNA (MADHYA PRADESH)**
- 2. STATE OF MP THROUGH DISTRICT
MAGISTRATE, GUNA (MADHYA
PRADESH)**

.....RESPONDENTS

**(BY MS. SOMYA CHATURVEDI– LEARNED COUNSEL FOR
RESPONDENT NO.1 AND SHRI G.P. CHAURASIYA, LEARNED
PUBLIC PROSECUTOR FOR STATE)**

*This petition coming on for orders this day, the Court passed the
following:*

ORDER

This criminal revision petition has been filed by the petitioner challenging the judgment of conviction and order of sentence dated 29.11.2018 passed by learned Judicial Magistrate First Class Guna, in Criminal Case No.901/2015, whereby the accused-petitioner was convicted and sentenced under [Section 138](#) of the Negotiable Instruments Act and to undergo rigorous imprisonment for a period of six months and to pay compensation of 12 lacs and also challenging the judgment dated 29.10.2022 passed by Fifth Additional Sessions Judge Guna, vide which appeal filed by petitioner against the judgments dated 29.11.2018 was dismissed.

As per the facts of the case, respondent No.1/complainant had entered into an agreement to sale of land piece bearing survey Number Patwari Halka number 1209/1B total land 19575 sq. ft. with the petitioner and his business partner Chandra Bhan Raghuvanshi wife Hemlata Raghuvanshi. Agreement to sale of land was executed into two parts and consideration of sale was not given in cash by the petitioner and issued a cheque of Rs. 35,60,000/- dated 22.03.2013 of the Punjab National Bank. The petitioner/accused had taken back the said cheque and made cash payment of Rs.5,60,000/- and issued two another cheque of Rs.5 Lakhs and Rs.25 Lakhs on 24.03.2013. When both the cheques were presented by the complainant in the bank, it got dishonoured because of insufficiency of funds. Thereafter petitioner took back the said dishonoured cheques and issued fresh cheques of SBI Banks amounting to Rs.5 Lakhs, 9 Lakhs, 7 Lakhs total Rs.30,00,000/-. On 28.05.2013 and on 06.07.2013 petitioner paid Rs. 2 Lakhs and Rs.3 Lakhs in cash to the complainant and took back the cheque amounting to Rs.5 Lakhs. Thereafter petitioner took back three remaining cheques and Rs.14,50,000/- was paid to the complainant in cash and in regard to

remaining amount i.e. Rs. 10,50,000/- two fresh cheques amounting to Rs.2,50,000/- and Rs.10,00,000/- were issued. When both the cheques were presented by the complainant in the bank, it also got dishonoured because of insufficiency of funds. A notice was sent by the complainant to the petitioner by registered A.D. On 18.10.2013 but despite that, petitioner had not paid the cheque amount, for which respondent No.1 had filed a complaint for the alleged offence under Section 138 of Negotiable Instruments Act against the accused.

After appreciating the evidence, learned JMFC, Guna, convicted and sentenced the accused-petitioner as stated above . Appeal against the judgment dated 29.11.2018 was filed, which was dismissed by learned Fifth Additional Sessions Judge Guna vide judgment dated 29.10.2022.

Aggrieved from the above-said judgment, the above- mentioned revision petitions has been filed by the petitioner.

Notice of motion was issued and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petitions.

On 22.12.2022 petitioner had given an undertaking before the coordinate Bench that she will deposit decretal amount of Rs.12 lacs within 30 days from the date of passing of this order but could not fulfill the undertaking given by her and today again she is seeking extension of time to fulfill the said undertaking.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, this Court finds that the fact regarding existing liability and issuance of cheques by the petitioner is not disputed. Admittedly, the cheques were issued by the present revision petitioner, which were dishonoured and the cheques were issued in discharge of existing liability. The proceedings under [Section 138](#) of the Act are criminal proceedings. The findings given by learned Courts below

are correct, as per evidence and law. The offence under [Section 138](#) of the Negotiable Instruments Act has been duly proved by the complainant by leading cogent evidence.

In the revision petition, this Court is not to re-appreciate the evidence like a Court of an appeal. This Court is only to see whether the findings given by the Courts below are perverse or against the law or whether the Courts below have misread any evidence or have not considered any material evidence. Nothing has been pointed out as to how the findings given by the Courts below are perverse. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Courts below.

The Apex Court in the case of **Duli Chand Vs. Delhi Administration as reported in (1975) 4 SCC 649** has held that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a re-appreciation of evidence. The said judgment has been followed by the Apex Court in the case of **State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others as reported in (2004) 7 SCC 659**.

In view of the above discussion, this court finds that the impugned judgments and order passed by the Courts below are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

(DEEPAK KUMAR AGARWAL)
JUDGE