

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.757 of 2008 (O&M)
Date of Decision:25.03.2015

Krishan Maheshwari

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. P.L. Singla, Advocate for the petitioner.

Mr. Chetan Sharma, AAG, Haryana for respondent No.1.

Mr. R.P.S. Ahluwalia, Advocate for the complainant/
respondent No.2.

NAVITA SINGH, J.

1. This revision petition has been filed against the order of conviction and sentence imposed on the petitioner by the Judicial Magistrate 1st Class, Ambala City, whereby the petitioner was directed to undergo rigorous imprisonment for one year and to pay compensation to the tune of Rs.1,50,000/- to the complainant and against the order dated 9.4.2008 passed by the Appellate Court, whereby sentence of rigorous imprisonment was reduced to ten months, but the amount of compensation was ordered to be kept intact.

2. The backdrop of the matter was that the petitioner was employed as Salesman by respondent No.2, but he joined with the condition that an advance of Rs.60,000/- would be given by the complainant to him. The condition was fulfilled. Thereafter, more money was demanded by the petitioner from time to time and the total amount of advance taken by him came to Rs.80,000/-. In December 1999, respondent No.2 demanded the money back, but instead of making the payment, the petitioner issued four post dated cheques as security

for the advance taken by him. Later on, he left the job. To recover his money, respondent No.2 presented the cheques but those were dishonoured.

3. Issuance of cheque was not denied by the petitioner and since sufficient funds were not available in his account for honouring the cheque, he was convicted and sentenced.

4. Counsel for the petitioner argued that the total amount of Rs.80,000/- already stood paid and the intention of the petitioner was not to cheat the complainant. He was a poor man, for which reason he had taken the job on the condition that advance payment would be made to him. The cheques were issued as security for repayment of the amount of Rs.80,000/-, but because the petitioner was not financially sound, it was not possible for him to keep that much amount in his bank account. Reliance was placed by counsel for the petitioner on the judgment reported as Damodar S. Prabhu Vs. Sayed Babalal H. 2010 (2) RCR (Criminal) 851.

5. So far as the reported case is concerned, it may be mentioned that no application for compounding the sentence was made by the petitioner. At the final stage, the oral request is not liable to be accepted because it can be said that there was no intention on the part of the petitioner to pay because had his intention been honest, he would have either made sure that the amount of the cheques was found in his account or he would have made a request to respondent No.2 for returning the cheques by making the payment either in installments or otherwise. Rather he left the job without clearing the account and without bothering that the cheques had been issued by him to respondent No.2. The latter was thus left with no choice but to present the cheques to the banker to realize the amount.

6. The contention on behalf of the petitioner that remaining in the employment of respondent No.2 till the advance was cleared was not possible because the trust between the parties was gone, would be of no avail to the petitioner. If he had wanted to leave the job for whatever reason, it was his duty to have repaid the advance amount taken by him knowing fully well that he had issued post dated cheques. He was aware that the cheques would be dishonoured as sufficient fund was not available in his bank account and, therefore, his intention was far from bonafide.

7. Merely because the principal amount stood paid, the petitioner cannot be exonerated.

8. After conviction, every convict goes to the complainant in such cases with folded hands for taking money and letting him go. The legislature in its wisdom framed law to secure the rights of the aggrieved parties so that people like the petitioner do not conveniently walk away with the other persons' money.

9. It may not be out of place to mention here that in his statement under Section 313 of the Code of Criminal Procedure, the petitioner did not take up any defence that the cheques were given as security. He rather denied even the issuance of the cheques. He went on to say that the complainant owed him thousands of rupees, which were not given. This rather shows that he was not a poor man as is being depicted on his behalf now.

10. No fault can be found with the finding of conviction of the courts below. Petitioner has been in custody for 1 month and 8 days out of the total sentence of 10 months. However, it is felt that the ends of justice shall be met by sentencing the petitioner to the period already undergone by him subject to the condition that he shall pay another amount of Rs.80,000/- to respondent No.2 as was held by the Madras High Court in K.N. Unnikrishnan Vs. M. Sivakumar 2013

(5) RCR (Criminal) 406 relied upon by the complainant. If the petitioner deposits the amount within two weeks from today, he shall be free and in case payment is not made as ordered, he shall be arrested to undergo the remaining part of the sentence awarded by the First Appellate Court.

11. Disposed of in the above terms.

(NAVITA SINGH)
JUDGE

25.03.2015
ishwar