

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1 CRR-2159-2013
Date of Decision: November 18, 2015

Jagjit Singh alias Jit Singh

.....Petitioner

Versus

Gurcharan Singh Randhawa and another

.....Respondents

2. CRR-2160-2013

Jagjit Singh alias Jit Singh

.....Petitioner

Versus

Gurcharan Singh Randhawa and another

.....Respondents

3. CRR-2161-2013

Jagjit Singh alias Jit Singh

.....Petitioner

Versus

Gurcharan Singh Randhawa and another

.....Respondents

4. CRR-2162-2013

Jagjit Singh alias Jit Singh

.....Petitioner

Versus

Gurcharan Singh Randhawa and another

.....Respondents

5. **CRR-2163-2013**

Jagjit Singh alias Jit Singh

.....Petitioner

Versus

Gurcharan Singh Randhawa and another

.....Respondents

and

6. **CRR-2164-2013**

Jagjit Singh alias Jit Singh

.....Petitioner

Versus

Gurcharan Singh Randhawa and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Present: Mr.Sunil Chadha, Sr.Advocate with
Ms.Arti Kaur, Advocate
for the petitioner in all the revision petitions.

Mr.Vivek K.Thakur, Advocate
for respondent No.1 in all the revision petitions.

Mr.K.S.Pannu, DAG, Punjab
for respondent No.2 in all the revision petitions.

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NARESH KUMAR SANGHI, J.(ORAL)

The present order shall dispose of all the above

captioned criminal revision Nos.2159, 2160, 2161, 2162, 2163 and 2164 of 2013, since parties to each petition are same and the similar factual and legal position are involved.

The present revision petitions have been filed by Jagjit Singh alias Jit Singh (complainant) challenging the separate orders, dated 25.03.2013, passed by learned Sessions Judge, Kapurthala, in separate appeals filed by Gurcharan Singh Randhawa (respondent No.1) challenging his conviction and sentence for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'the NIA') recorded by learned Additional Chief Judicial Magistrate, Kapurthala, were accepted and the case was remanded to learned trial Court for passing the orders afresh. It is also apposite to mention that the criminal revision petitions filed by petitioner-complainant Jagjit Singh alias Jit Singh for enhancement of the compensation was also dismissed vide the same impugned order.

Brief facts of the case, as put up by the petitioner-complainant are that respondent-accused Gurcharan Singh Randhawa allured the petitioner-complainant to visit abroad along with his wife. It was assured by the respondent-accused that the requisite documents would be got prepared by him

(Gurcharan Singh Randhawa). It was settled that the complainant would pay ₹10,00,000/- (Rupees ten lacs only) for securing visa for the petitioner-complainant and his wife for going to Belgium. A sum of ₹4,00,000/- (Rupees four lacs only) and passports were handed over by the petitioner-complainant, Jagjit Singh alias Jit Singh, to Gurcharan Singh Randhawa, respondent-accused. After some time, Gurcharan Singh Randhawa contacted Jagjit Singh @ Jit Singh to pay the balance amount of ₹6,00,000/- (Rupees six lacs only) since the visa had been granted. Petitioner-complainant, Jagjit Singh alias Jit Singh, paid the balance amount to accused-Gurcharan Singh Randhawa. After some time petitioner-complainant -Jagjit Singh alias Jit Singh came to know that applications for issuance of visa were rejected for want of proper documents. When complainant-Jagjit Singh alias Jit Singh contacted accused -Gurcharan Singh Randhawa to return the money paid by him (petitioner-complainant) then the accused told him that a sum of ₹4,00,000/- (Rupees four lacs only) was spent on preparation and presentation of the documents before the authorities for issuance of visa. For remaining amount of ₹6,00,000/- (Rupees six lacs only) the accused issued six cheques dated 18.07.2008 of ₹1,00,000/-(Rupees one lac only) each in favour of petitioner-

complainant. At that time, it was assured by the respondent-accused that on presentation, the said cheques would be honoured by the bank. However, on presentation of the cheques the same were returned with the remarks - '*insufficient funds*'. A legal notice was issued and the same was received by the respondent-accused. Despite that the accused did not make the payment rather sent a false and frivolous reply. However, the issuance of the cheques was admitted. The complainant was constrained to file the complaint under Section 138 of the NIA.

After recording of the preliminary evidence, the respondent-accused was summoned. On his appearance before learned trial Court, a notice of accusation was served upon him, to which he (respondent-accused) pleaded not guilty and claimed trial.

In order to prove his case, the petitioner-complainant himself appeared as CW1 and examined Sukhwinder Singh as CW2 and Surat Singh as CW3.

The statement of the respondent-accused, in terms of Section 313, Cr.P.C., was recorded. He denied the incriminating material emerging against him. He took the stand that he (respondent-accused) had business dealings with one Tirath Singh to whom he (respondent-accused) handed over ten blank

signed cheques. Petitioner-complainant -Jagjit Singh alias Jit Singh is related to Tirath Singh. Said Tirath Singh handed over the cheques to petitioner-complainant Jagjit Singh alias Jit Singh, who misused the same and filed separate complaints against him (respondent-accused-Gurcharan Singh Randhawa). In fact Gurcharan Singh did not owe anything to Jagjit Singh alias Jit Singh. In his defence, respondent-accused-Gurcharan Singh examined Sukhwinder Singh as DW1 and Dinesh Kapoor as DW2.

Learned trial Magistrate held respondent-accused -Gurcharan Singh Randhawa guilty for the offence punishable under Section 138 of the NIA and awarded him to undergo rigorous imprisonment of one year and to pay a fine of ₹5,000/- (Rupees five thousand only) in each case.

Dis-satisfied with the judgments of conviction and orders of sentence, respondent-accused -Gurcharan Singh Randhawa approached the Court of Session by way of six separate appeals. Petitioner-complainant Jagjit Singh alias Jit Singh also filed separate revisions for grant of adequate compensation. However, learned appellate Court while partly allowing the appeals and dismissing the criminal revision petitions filed by the petitioner-complainant, remanded all the

matters to learned trial Court for decision afresh by making the following observations:-

“16. In the very beginning of the discussion, I deem it expedient to make to clear that the present appellant/accused had also filed a complaint against the present respondent/complainant Jagjit Singh and one Tirath Singh under Sections 420/465/467/468 of the IPC, vide No.248 of 11.12.2008, in the Court of Ld. Illaqa Magistrate. From the perusal of this complaint, it is also found that cheques mentioned in this complaint are the same, which are in issue, in this appeal and the five other appeals arising out of six cheques, regarding which, this complaint under Section 138 of the Act, on the basis of one of said cheques was filed and disposed of by the Ld.Illaqa Magistrate, vide the impugned judgment and order of sentence. Gurcharan Singh Randhawa, complainant of that case and the present appellant/accused had approached the Hon’ble High Court of Punjab & Haryana, by filing a petition under Section 482 of the Cr.P.C. for seeking quashing of complaint no.1427 dated 16.12.2008, under Section 138 of the Act and the summoning order of this date vide C.R.Misc.No.M 35013 of 2009, in which the following order was passed:-

“This is a petition for quashing the complaint under Section 138 of the Negotiable Instruments Act as well as the summoning order.

Learned counsel has argued that prior to the filing of this complaint the petitioner had filed a complaint No.248 of 5.12.2008 with regard to the same cheques and that the said complaint is pending trial before the Additional Chief Judicial Magistrate, Kapurthala.

It is argued that in case the petitioner is able to prove the allegations made in that complaint the present complaint would have to fail.

In the circumstances I deem it appropriate if both the cases viz. Criminal Complaint No.248 dated 5.12.2008 which is now fixed for 18.01.2010 and the instant criminal Complaint No.1427 dated 16.12.2008 which is now fixed for 10.12.2009 are decided together by the learned ACJM, Kapurthala.

Consequently, this petition is disposed of with a direction to the learned Additional Chief Judicial Magistrate, Kapurthala, to dispose of the aforementioned two complaints together.”

Here it is also made clear that matter in issue in the present complaint No.1429 of 16.12.2008 is also identical with the matter in issue in above said complaint No.1427 of 16.12.2008.

The above said complaint No.248 dated 11.12.2008 filed by complainant Gurcharan Singh under Sections 420, 465, 467, 468 of the IPC was dismissed by the Ld.Trial Magistrate, vide order dated 20.01.2011 at the preliminary stage without summoning of the accused. Against this order, he

filed a criminal revision petition No.29 dated 11.3.2011, titled as 'Gurcharan Singh vs. Jagjit Singh and another' before this Court, which has been accepted vide order of the date and the matter has been remanded back to the Id.Trial Court for its fresh decision according to law after re-evaluating /re-assessing the evidence led by the complainant in preliminary. In the light of the above said order of the Hon'ble High Court dated 10.12.2009, and for the above said reason, this complaint under Section 138 of the Act and complaint No.248 dated 11.12.2008 are to be disposed of together. So far the remaining five appeals are concerned, the matter in issue, in all these appeals, is also the same, since the same have been arisen from the remaining five cheques, of which mention has been made in the above said complaint no.248 dated 11.12.2008.

17. The Id.counsel for the appellant has argued that there was neither any dealing between the appellant/accused and respondent/complainant nor the appellant/accused had any legal liability or debt to discharge towards the respondent/complainant on the date of issuance of the alleged cheque Ex.C1 and hence there does not arise any question of issuance of said cheque on the part of the appellant/accused, in favour of respondent/complainant. In this connection, he has further contended that in fact the appellant/accused had some business dealing with above said Tirath Singh and that in this regard, he had

issued 10 blank signed cheques, in favour of said Tirath Singh, who is relative of the present complainant/respondent. He has further delivered the said cheques to the complainant, who misused the same and filed the present complaint against him. Then, it is further his contention that the alleged cheque has not been issued in order to discharge from any legal liability or debit and that rather the same was issued as a security. Then, he has also pointed out about the financial capacity of the complainant to pay the alleged amount of Rs.10 lacs to the appellant/accused, but, I do not want to record any finding on the above issues pointed out by the Ld.Counsel for the appellant/accused for the reason above mentioned in para no.16 of this judgment.

18. In the light of above discussion, the Court is left with no other option except to remand this case to the trial Court concerned for its afresh decision, according to law, after accepting this appeal with the complaint case, above mentioned, bearing No.248 dated 11.12.2008. So, this appeal is accordingly accepted. Judgment and order of sentence, under appeal, are also accordingly set aside. Since this case is pertaining to the year 2008, so, the Ld.trial Court is directed to dispose of this case within a span of one year commencing from 10.04.2013, by giving short adjournments. So far the Criminal Revision mentioned at Sr.No.2 above, titled as 'Jagjit Singh alias Jit Singh Vs. Gurcharan Singh' is concerned, in the light of

above discussion, it has become infructuous and the same is disposed of accordingly. Parties are directed to appear before the Ld.trial Court on 10.04.2013 at 10.00 a.m. positively. Certified copy of this judgment be placed on the file of Criminal Revision No.6 dated 14.02.2011 titled as Jagjit Singh alias Jit Singh Vs. Gurcharan Singh'. Record of the Ld.trial Court alongwith copy of the judgment be sent back to the Court concerned immediately. File of this court be consigned to the record-room."

During the course of arguments, records of CRM-M-34090, 35009, 35010, 35011, 35013 and 35016 of 2009 were summoned from the record room of this Court.

Vide order, dated 02.12.2009 passed in CRM-M-34090-2009 titled Gurcharan Singh vs Jagjit Singh and another, this Court had passed the following order:-

"This is a petition for quashing the complaint under Section 138 of the Negotiable Instruments Act as well as the summoning order.

Learned counsel has argued that prior to the filing of this complaint the petitioner had filed a complaint No. 248 dated 5.12.2008 with regard to the same cheques and that the said complaint is pending trial before the Chief Judicial Magistrate, Kapurthala.

It is argued that in case the petitioner is able to prove the allegations made in that complaint the present complaint would have to fail.

In the circumstances I deem it appropriate if both the cases viz.Criminal Complaint No. 248 dated 5.12.2008 which is now fixed for 18.01.2010 and the instant Criminal Complaint No. 428 dated 16.12.2008 which is now fixed for 10.12.2009 are decided together by the learned CJM, Kapurthala.

Consequently this petition is disposed of with a direction to the learned Chief Judicial Magistrate, Kapurthala to dispose of the aforementioned two complaints together.”

Similar orders were passed by this Court on 10.12.2009 in CRM-M-35009, 35010, 35011, 35013 and 35016 of 2009.

Learned senior counsel for the petitioner-complainant submitted that learned Sessions Judge had gone beyond his jurisdiction to set aside the well reasoned judgment of conviction and sentence recorded by learned Additional Chief Judicial Magistrate, Kapurthala, and remanded the matter to learned trial Court for deciding the cases afresh.

On the other hand, Mr.Vivek Thakur, learned counsel for the respondent-accused submitted that learned Sessions Judge/appellate Court was well within his jurisdiction to set aside the judgment of conviction and sentence recorded by learned Additional Chief Judicial Magistrate, Kapurthala, and to

remit the matters to learned trial Court for decision afresh, in view of the orders passed by this Court on 02.12.2009 and 10.12.2009 in six petitions filed by respondent-accused Gurcharan Singh Randhawa in the year 2009, whereby it was specifically directed that the complaints filed by Gurcharan Singh Randhawa against Jagjit Singh alias Jit Singh and Tirath Singh and the complaints filed by Jagjit Singh alias Jit Singh against Gurcharan Singh Randhawa are to be decided together by the same Presiding Officer, i.e. Additional Chief Judicial Magistrate, Kapurthala.

Since the complaints filed by Gurcharan Singh Randhawa were dismissed by learned Additional Chief Judicial Magistrate, Kapurthala, and revision petitions were filed before the Court of Session challenging the dismissal of the said complaints and later the orders of dismissal of the complaints were set aside and the matters were remitted to learned Additional Chief Judicial Magistrate, Kapurthala, for reconsideration of the summoning orders on the basis of the material available on record, therefore keeping in view the orders passed by this Court, learned Sessions Judge rightly remitted the cases, in which appeals against conviction and sentence recorded against Gurcharan Singh Randhawa were

presented, to learned trial Court for decision afresh.

This Court is also of the considered opinion that pursuant to the orders passed by this Court on 02.12.2009 and 10.12.2009, all the cases between the same parties were to be decided together and in view of the said fact learned Sessions Judge had rightly remanded the cases to learned Additional Chief Judicial Magistrate, Kapurthala, for deciding the cases afresh along with the complaints filed by respondent-accused Gurcharan Singh Randhawa against Jagjit Singh alias Jit Singh and Tirath Singh.

Dismissed.

November 18, 2015
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(NARESH KUMAR SANGHI)
JUDGE