

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRR No. 1299 of 2014 (O&M)
Date of Decision : 20.04.2015

Bahadur SinghPetitioner

Versus

State of Punjab and anotherRespondents

2. CRR No. 1595 of 2014 (O&M)

Bahadur SinghPetitioner

Versus

State of Punjab and anotherRespondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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. K.D.S. Sodhi, Advocate
for the petitioner.

Mr. Gazi Mohd., DAG, Punjab.

Mr. A.S. Gill, Advocate
for respondent no. 2.

R.P. Nagrath, J. (Oral)

This order will dispose of CRR No. 1299 of 2014 and CRR No. 1595 of 2014, filed by the petitioner, seeking to challenge the concurrent findings of the courts below recording conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881.

Separate complaints were filed in respect of dishonour of two cheques issued by the petitioner in favour of the complainant-

respondent no. 2 with regard to discharge of his liability of returning the amount which he allegedly obtained for sending son of the complainant-respondent no. 2 abroad.

Learned counsel for the petitioner has confined his argument only qua the quantum of sentence and has not attacked the merits of conviction recorded by both the courts below.

The contention of learned counsel for the petitioner is only confined to the prayer made in CRM No. 10388 of 2015 in CRR No. 1595 of 2014 for making the sentences in both the cases concurrent.

Initially the petitioner issued two cheques in favour of the complainant-respondent no. 2 and those cheques bounced but ultimately a compromise was reached between the parties. According to the said understanding, the petitioner issued a cheque dated 20.06.2009, for an amount of ₹ 1,35,000/- relating to CRR No. 1299 of 2014 and another cheque dated 20.06.2009 for ₹ 1,50,000/- relating to CRR No. 1595 of 2014. As per version of the complainant, both the cheques were presented for payment on 20.07.2009 and dishonoured. Thereafter, a legal notice dated 27.07.2009 was issued to the petitioner but the amount was not paid. The complaints were instituted before the Magistrate on 04.09.2009 for offence under Section 138 of the Negotiable Instruments Act.

The learned trial court awarded similar sentences in both the complaint cases, awarding him rigorous imprisonment for one year; to pay fine of ₹ 5000/-, in default to further undergo 3 months of simple imprisonment and also directed him to pay the cheque amount in both the cases as compensation and in default of payment of

compensation to further undergo rigorous imprisonment for three months.

As per custody certificate dated 12.03.2015, the petitioner has undergone more than one year and one month of imprisonment including the remissions of 2 months and 12 days upto 12.03.2015 earned by him. When CRR No. 1299 of 2014 was listed on 19.05.2014 notice of motion to the respondent was issued and in the meanwhile the petitioner was ordered to be released on bail subject to deposit of cheque amount. It is, however, contended that the petitioner could not avail of that concession as he was unable to pay the amount of cheque.

However, the question posed on the previous date was whether the default clause of non-payment of compensation in terms of Section 357(3) Cr.P.C. was permissible.

I have heard learned counsel for the parties, carefully perused the paper-book and judgments passed by both the courts below.

Learned counsel for the complainant-respondent no. 2 relies upon two judgments of Hon'ble Supreme Court, which are under Negotiable Instruments Act in support of his contention, wherein it was held that this default clause of punishment is legal. These judgments are reported in **K.A. Abbas H.S.A. vs. Sabu Joseph and another, 2010 (6) SCC 230** and **R. Mohan vs. A.K. Vijaya Kumar, 2012 (8) SCC 721.**

There is sufficient force in the contention of the learned counsel for the petitioner for making the sentences concurrent

because both the cheques were issued for discharge of the liability arising out of the same transaction and further the dates of presentation and bouncing of the cheques and sending of legal notice are same and even the judgments in both the cases were passed on the same day. Even the learned appellate court in the concluding paragraph of the judgment has observed so that the punishment awarded to the petitioner shall run concurrently.

In **V.K. Bansal vs. State of Haryana and others, 2013**

(7) SCC 211, Hon'ble Supreme Court held that the legal position on the issue favours exercise of discretion to the benefit of prisoner in cases where the prosecution is based on a single transaction, no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor. Hon'ble Supreme Court, however, did not permit concurrent running of sentences in the cases where the transactions of borrowing loan were different. Hon'ble Supreme Court also clarified that the direction regarding concurrent running of sentence be limited to the substantive sentence only and not to the default clause of imprisonment for non-payment of fine/compensation. Reliance is also placed upon **Gurdeep Singh vs. State of Punjab, 1988 (1) RCR (Criminal) 114** and **Mohan Lal vs. State of Punjab and another, 2011 (7) RCR (Criminal) 2503**, judgments of this Court in support of this contention.

On the other hand, learned counsel for respondent no. 2-complainant placed reliance upon **Ahammedkutty vs. Abdullakoya,**

2009 (6) SCC 660, wherein Hon'ble Supreme Court held that if amount of compensation, directed to be paid by the court in exercise of its jurisdiction under Section 357 (3) Cr.P.C., is not deposited, the same can be realized as fine in terms of Section 421 Cr.P.C. Therefore, part of the impugned order whereby and whereunder the appellant was directed to undergo imprisonment for a period of one month, in the event of default to pay compensation was set aside and rest of the order was upheld.

Ahammedkutty's case (supra) was referred on behalf of the accused in **K.A. Abbas's case (supra)** and the Hon'ble Supreme Court observed that in the light of several decisions reiterating the opposite stand, this case needs to be viewed in isolation and cannot be taken to be against the established position preferred by the Supreme Court on the issue over a period of two decades.

However, the other question would be whether the amount of compensation and the default clause thereto can go side by side with imposition of fine of ₹ 5000/- awarded by the trial Court. In both **K.A. Abbas and V.K. Bansal's case (supra)**, the fine was not forming part of the sentence and courts below had awarded the imprisonment and also compensation as part of the punishment only.

In **R. Mohan's case (supra)**, Hon'ble Supreme Court observed that if fine is not forming part of sentence the court may order the accused to pay compensation to the person who has suffered any loss or injury because of the act of the accused for which he is sentenced. Even in this case, the fine was not forming part of the sentence awarded to the accused in a case under Section 138 of

the Negotiable Instruments Act. The Metropolitan Magistrate sentenced the appellant to undergo 3 months of simple imprisonment and to pay compensation of ₹ 5 lacs to the complainant under Section 357 (3) Cr.P.C., in default to further undergo 2 months of simple imprisonment. That was a case of cheque of ₹ 5 lacs which bounced.

Anyhow, the sentence which a Magistrate can pass under Section 138 of the Negotiable Instruments Act is imprisonment which may extend to two years or fine to the extent of twice the amount of cheque or with both. So, even if the normal powers of the Magistrate of the first class empowers the imposition of fine of ₹ 5000/- but this special provision of Section 138 of the Negotiable Instruments Act extends that power to imposition of fine to the extent of twice the amount of cheque. But if lesser amount of fine has been imposed in the instant cases with default clause, the same cannot go side by side with the amount of compensation. To this extent, therefore, the impugned order passed by the trial Court and consequently of the lower appellate court has to be set aside so far as imposition of fine of ₹ 5000/- is concerned.

It also needs to be observed that courts below have awarded three months of rigorous imprisonment in default of making payment of amount of cheque as compensation in both the cases. Looking into the fact that the amount of cheques was not huge and the petitioner has not been able to pay the amount of cheques despite undergoing imprisonment for one year and one month including the remissions, it would have been sufficient if the sentence in default of

making payment of compensation is suitably reduced. The period of sentence in default of payment of compensation in Criminal Complaint No. COMA/30202914 dated 04.09.2014 out of which CRR No. 1299 of 2014 arises, is reduced to one month from 3 months of imprisonment and the period in default of making payment of compensation in other Criminal Case No. COMA/30202953 dated 04.09.2009 out of which CRR No. 1595 arises, is reduced to two months.

In view of the aforesaid discussion, both the criminal revisions are dismissed on merits but partly allowed setting aside the imprisonment of fine in both the the criminal revisions and reducing the sentence in default of payment of compensation in CRR No. 1299 of 2014 from the period of 3 months to one month and in CRR No. 1595 of 2014 to the period of two months in default of payment of compensation. As regards prayer for concurrent running of sentences in both the complaint cases i.e. COMA/30202914 dated 04.09.2009 and COMA/30202953 dated 04.09.2014 titled '*Joginder Ram vs. Bahadur Singh*', as made in CRM No. 10388 of 2015 in CRR No. 1595 of 2014, it is directed that substantive sentences in both the cases would run concurrently.

With the aforesaid modification in the sentence, the instant revisions are dismissed on merits.

April 20, 2015
jk

(R.P. NAGRATH)
JUDGE