

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

- 1.** **Date of decision : 02.03.2015**
Crl. Revision No. 46 of 2013
- Kavinder Singh Khanna @ Kulwinder Singh Khanna @ K.S. Khanna**
....Petitioner
- versus**
- Inderjit Singh and another**
...Respondents
- 2.** **Crl. Revision No. 47 of 2013**
- Kavinder Singh Khanna @ Kulwinder Singh Khanna @ K.S. Khanna**
....Petitioner
- versus**
- Jatinderpal Singh and another**
...Respondents
- 3.** **Crl. Revision No. 48 of 2013**
- Kavinder Singh Khanna @ Kulwinder Singh Khanna @ K.S. Khanna**
....Petitioner
- versus**
- Inderjit Singh and another**
...Respondents
- 4.** **Crl. Revision No. 49 of 2013**
- Kavinder Singh Khanna @ Kulwinder Singh Khanna @ K.S. Khanna**
....Petitioner
- versus**
- Jatinderpal Singh and another**
...Respondents

5.

Crl. Revision No. 50 of 2013

Kavinder Singh Khanna @ Kulwinder Singh Khanna @ K.S. Khanna

....Petitioner

versus

Shamsher Singh Sekhon and another

...Respondents

6.

Crl. Revision No. 51 of 2013

Kavinder Singh Khanna @ Kulwinder Singh Khanna @ K.S. Khanna

....Petitioner

versus

Shamsher Singh Sekhon and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. H.S. Bhullar, Advocate,
for the petitioner(s).

Mr. Deepak Nayar, Advocate,
for respondent No.1-complainant.

RITU BAHRI, J.

This order shall dispose of Crl. Revision Nos.46 to 51 of 2013,
as common questions of law and facts are involved in all these petitions.

Prayer in these petitions is to set aside the judgment(s) dated
17.09.2012 passed by the Sessions Judge, Amritsar, whereby he has
dismissed Crl. Appeal Nos.9743, 9746, 9754, 9846, 9888, 9893 of
2011/2012 dated 12.01.2011/18.04.2012, filed by the accused-petitioner and
upheld the judgment(s) of conviction dated 17.12.2010 passed by the

Judicial Magistrate Ist Class, Amritsar in separate complaints.

In all the six complaints, the trial Court has separately convicted the accused-petitioner Kavinder Singh Khanna @ Kulwinder Singh Khanna @ K.S. Khanna under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of 1 year and to pay a fine of Rs.1000/-. In default of payment of fine, he was further sentenced to undergo simple imprisonment for two days.

Kavinder Singh Khanna @ Kulwinder Singh Khanna, accused-petitioner, who was having friendly relations with the complaints, had taken separate loans of Rs.3,00,000/-, Rs.5,00,000/-, 5,00,000/- from Inderjit Singh, Jatinder Pal Singh Dhillon and Shamsher Singh-complainants, which was to be payable with interest at the rate of 18% per annum for the purpose of expanding his business. However, he was irregular in making payment of interest. Thereafter, in order to discharge his liability, accused-petitioner issued six separate cheques bearing Nos.768032 dated 25.01.2006, 693650 dated 10.10.2005, 768015 dated 26.08.2005, 768045 dated 04.01.2006, 768029 dated 17.01.2006 and 768044 dated 03.09.2005 in favour of the complainants, drawn on Andhra Bank, Ghatkopar (West), Mumbai. However, on presentation, the said cheques were dishonoured with the remarks "Payment stopped by the Drawer" and "Insufficient Funds." Thereafter, the complainants issued separate legal notices, calling upon the accused-petitioner to make payment of the cheques amount, but he has failed to do so. Hence, they filed six separate complaints against the petitioner-accused.

On appearance of the accused-petitioner before the Court,

notices of accusation under Section 138 of N.I. Act were served upon him, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the complainant himself appeared as CW-1 and tendered some documents (Exc.C1 to Ex.C5). After closure of evidence of the complainant, statements of accused-petitioner under Section 313 Cr.P.C were recorded in each of the complaint, wherein entire incriminating evidence was put to him. However, he denied the same and pleaded false implication. He further stated that Shamsher Singh was a friend of Inderjit Singh son of Kuldip Singh, who had also filed complaint against him. He is related to Mohinder Singh Randhawa, a developer and builder at Bombay, who is known to him for the last 10-11 years. He had paid him Rs.1,20,000/- for purchase of flat and issued a cheque No.159582 dated 24.01.2004 payable at Punjab and Maharashtra Co-operative bank, Mumbai, which was cleared on 27.01.2004. He had also issued six blank cheques for raising loan for the purchase of flat from different banks. Those cheques were delivered to Inderjit Singh, his friend Shamsher Singh and Jatinder Pal Singh by aforesaid Mohinder Singh Randhawa. Thereafter, the complainants had filed these false cases against him at the instance of Mohinder Singh, as neither he had given any flat nor returned his amount.

Trial Court, after going through the entire evidence led by the parties, convicted and sentenced the accused-petitioner in all the complaints in the aforesaid terms. The Appellate Court upheld the findings of the trial Court and dismissed the appeals filed by the accused-petitioner.

While dismissing the appeals, the appellate Court has examined the defence, set up by the accused, that he had issued six blank cheques in favour of Mohinder Singh Randhawa along with sale consideration. Said

Mohinder Singh Randhawa had delivered those cheques to all the complainants to get the accused-petitioner prosecuted at Amritsar. The accused had filed a complaint under Section 420 IPC (Ex.D3) against Mohinder Singh Randhawa and vide order dated 30.11.2007 (Ex.D2), the said complaint was sent to Police Station, Chembur, under Section 202 Cr.P.C. for investigation. It was observed that the accused-petitioner did not place on record any such report submitted by the police. Before institution of the complaint, legal notices were served upon the accused-petitioner through registered AD posts. However, no reply was sent by the accused to the said notice(s). Since no reply was filed by the accused, a presumption under Section 139 N.I. Act was in favour of the complainant and hence, the Sessions Judge, Amritsar had held that the accused-petitioner had committed the offence under Section 138 of N.I. Act.

Learned counsel for the petitioner has argued that the petitioner is 100% blind and the appeals were received by transfer in the Court of Sessions Judge, Amritsar on 16.05.2012. However, on 17.09.2012 those were dismissed by the said Court. He has argued that on 06.08.2012, learned counsel for the accused did not appear. The appeals were decided by first Appellate Court in the absence of counsel for the accused (petitioner).

Vide order dated 28.08.2014, learned counsel for the complainant had sought time to place on record certain information, which he had obtained under the Right to Information Act. The District & Sessions Judge, Amritsar had also sent a report dated 07.09.2013. As per this report, six criminal appeals under Section 138 of Negotiable Instruments Act bearing Criminal Appeal Nos.9743, 9746, 9754, 9846, 9888 and 9893 of 12.1.2011/2012 were received by transfer in that Court on 16.05.2012. On

16.05.2012, appellant-Kavinder Singh (petitioner) was present along with his counsel Mr. B.S. Lyallpuria, Advocate and the appeals were adjourned to 05.07.2012 for arguments. On 05.07.2012, an application for exemption from personal appearance was filed on behalf of the appellant, which was allowed by the Court and the appeals were adjourned to 13.07.2012. However, the appellants failed to appear on 13.07.2012 and 23.07.2012. On that day, personal and surety bonds of the appellant were cancelled and he was ordered to be summoned through non-bailable warrants. Notice to his surety and attesting witness was also issued for 06.08.2012. In Crl. Appeal No. 9743 of 12.01.2011/2012, non-bailable warrants were received back unexecuted. However, his surety namely Renu was served, but she did not appear on that day. Accordingly, she was ordered to be summoned through bailable warrants of arrest in the sum of Rs.10,000/- with one surety in the like amount for 17.08.2012. On 17.08.2012, Renu-surety appeared and sought sometime to produce accused-appellant. The case was adjourned to 17.09.2012. Thereafter, Renu, surety of the accused, did not turn up. Learned counsel for the accused-appellant was not appearing for the last several dates of hearing and the Court proceeded to decide the same after hearing learned counsel for the complainant.

In Crl. Appeal No.9754 of 12.1.2011/2012 titled as 'Kavinder Singh Khanna Vs. Jatinder Pal Singh', Gogi was surety of the accused-appellant and in the process of issuing sale warrants, it was found that there was no person in the name of Gogi wife of Vijay Kumar residing at the given address and the possession over the plot was not in the name of said surety. Similarly in Crl. Appeal No.9846 of 12.1.2011/2012, one person namely Harwinder Singh was the surety of appellant and in the process of

issuing sale warrants, it was found that said Harwinder Singh was not the owner of the property and his address was not traceable. In Crl. Appeal No.9888 of 12.1.2011/2012, Balbir Singh stood surety on behalf of appellant-accused and in the process of sale warrants, it was found that he was not the owner of the property and the address of Balbir Singhw as also not traceable. In Crl. Appeal No. 9893 of 12.1.2011/2012, one Manjinder Singh was the surety of accused-appellant and in the process of issuing sale warrants, it was found that he had already sold the property vide Vasika No.8223 dated 28.08.2012. In all these four appeals, Satnam Singh, Numberdar, had identified the aforesaid sureties of accused at the time of furnishing surety bonds. However, as per the statement of Sh. Harbhajan Singh, Clerk in the office of Qanungo, Amritsar, there was no Numberdar by the name of Satnam Singh son of Puran Singh, resident of village and Post Office, Ghanupur Kale. Thus, the papers attached by the surety of accused at the time of furnishing surety bonds were found to be forged one. Accordingly, the Sessions Judge Amritsar, has directed the SHO, Police Station Civil Lines, Amritsar to register FIR against the accused-Kavinder Singh Khanna and his aforesaid four sureties under Sections 419, 420, 464, 465, 466, 468, 471 IPC. Subsequently, FIR No.163 dated 04.06.2013 has been registered at Police Station, Civil Lines, Amritsar.

During the course of hearing on 25.07.2013, learned counsel for the petitioner had contended that the petitioner was 100% blind. Accordingly, he was directed to be admitted to bail on the bail bonds, already executed by him before the Sessions Judge, Amritsar.

All the above facts have been concealed by the petitioner before filing these petitions. However, in view the order dated 25.07.2013

passed by this Court, he was continue to be admitted on bail.

As per the report submitted by the District and Sessions Judge, Amritsar, all the sureties furnished by the petitioner were found to be fake. There was no Numberdar in the name of Satnam Singh, who had identified the sureties of the accused-petitioner at the time of furnishing surety bonds. Accordingly, FIR No.163 dated 04.06.2013, under Sections 419, 420, 464, 465, 466, 468, 471 IPC, has been registered against the accused-petitioner at Police Station, Civil Lines, Amritsar.

Keeping in view the fact that the petitioner had furnished fake sureties before the Court of Sessions Judge, Amritsar and an FIR No.163 dated 04.06.2013, under Sections 419, 420, 464, 465, 466, 468, 471 IPC, has been registered against him at Police Station, Civil Lines, Amritsar. The plea of the petitioner that he was not present during the hearing of appeals and thereby he has been prejudiced, is liable to be rejected. Moreover, having examined the impugned judgments, no illegality, much less irregularity, has been found therein warranting interference by this Court.

Resultantly, all the petitions i.e. Crl. Revision Nos.46 to 51 of 2013 are dismissed.

(RITU BAHRI)
JUDGE

02.03.2015
ajp