IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2524 of 2014
Date of Decision: July 31, 2015

Mohinder Singh ...Petitioner

Versus

Jagdish Chander ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. B.S. Bajwa, Advocate
for the petitioner.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

The revisionist-convict was tried in criminal complaint under Section 138 of Negotiable Instruments Act filed by the complainant Jagdish Chander-present respondent and the Court of learned JMIC, Amritsar through judgment and order of sentence dated 17.01.2011 found him guilty and convicted him for simple imprisonment of one year and to pay compensation to the tune of ₹4,30,000/- to the complainant and in default thereof to undergo further imprisonment for a period of six months. On appeal, the Court of learned Additional Sessions Judge, Amritsar through impugned judgment dated 4.12.2012 dismissed the appeal of the appellant upholding the judgment of conviction. The same is subject matter of the present assailment by way of criminal revision.

As is established on the records, the appellant had taken a lone of ₹2,15,000/- from the complainant and in lieu of which he has issued cheque No.524108 dated 24.8.2009 drawn on ICICI Bank Ltd Ex.C1. In fulfilment of obligation of outstanding amount same was dishonoured by memo dated 9.9.2009 Ex.C2 on account of insufficient funds. The same was followed by issuance of legal notice dated

16.9.2009 Ex.C3 which was duly served upon the accused- appellant, who failed to comply with the same leading to the filing of the complaint.

The complainant has examined himself as CW1 but the accused did not lead any evidence in defence, though, his stand under Section 313 Cr.P.C. is of total denial. The amendment to the provisions of Negotiable Instrument Act, 1881 introduced w.e.f. 1989 was with the sole object to bring about amenability in the banking system and, thus, mercantile transaction. The very provisions of Section 139 of the Act lays down presumption in favour of the holder of a cheque to the effect that he received the cheque in whole or in part of any debt or legally recoverable liability. This special provision is to prevent undue harassment to the victims of such offences. In the present case accused has not only failed to lead any plausible reason and failed to rebut the same which is a rebuttable presumption as to how or in what manner he has issued the cheque in question out of his account. Though, on behalf of the appellant a request for leniency has sought to be raised qua the quantum of sentence but having regard to the fact that the appellant has already undergone the prescribed sentence of imprisonment and as has been brought to the knowledge of this Court by the learned counsel for the respondent that he has been released on 14.7.2015 after completion of his sentence, thus, even otherwise, he has undergone the sentence of imprisonment.

Thus, in the totality of this, nothing is found fault with the findings of the two Courts below which are consistent. As such, the appeal being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 31, 2015
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