

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

**Crl. Revision No.2905 of 2014 (O & M)
Date of Decision:-30.3.2015**

Om Parkash

...Petitioner

Versus

Smt. Bholi Puri

...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Ms. Rupinder Kaur Thind, Advocate
for the petitioner.

Mr. Malkeet Singh, Advocate
for the respondent.

HARI PAL VERMA J.(Oral)

The present criminal revision has been preferred by the petitioner against the judgment dated 30.8.2014 passed by learned Additional Sessions Judge (A), Fast Track Court, Amritsar, whereby the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 16.9.2011 passed by learned Judicial Magistrate 1st Class, Amritsar, vide which the petitioner has been convicted and sentenced for an offence punishable under Section 138 of Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.2000/- and in default to further undergo simple imprisonment for a period of two months, was dismissed with reduction in the quantum of sentence.

Brief facts of the case are that complainant Bholi Puri wife of Satish Puri, resident of House No.1037/1, Gali Kharassian, Katra Baghian, Ram Bagh, Amritsar, filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1988 read with Section 420 of the Indian Penal Code with the averments that the petitioner/accused took a loan of Rs.1,00,000/- from her. In order to discharge the legal debt and liability and to pay the said amount, the accused issued a cheque bearing No.003666 dated 30.4.2005 for an amount of Rs.1,00,000/- drawn on Union Bank of India, S.S.B. Branch, Majith Mandi, Amritsar in the favour of complainant. On presentation of the said cheque, the banker of the complainant sent the said cheque for collection of the cheque amount, but the said cheque was returned by the banker of the accused as dishonoured with the memo dated 4.6.2005 having remarks "No account/Account closed on advice".

As required under law, the complainant served statutory legal notice dated 16.6.2005 upon the accused through registered AD post as well as through UPC post, calling upon the accused to make the payment of the said dishonoured cheque.

However, the petitioner-accused failed to make any payment to the complainant, compelling the complainant to file complaint under Section 138 of the Negotiable Instruments Act read with Section 420 of the Indian Penal Code.

On the basis of preliminary evidence, the petitioner-accused was ordered to be summoned vide order dated 14.7.2005 and was granted bail. Thereafter, notice under Section 138 of the Negotiable

Instruments Act was duly served upon the accused on 5.10.2006 as prima facie case was made out against the accused. However, the accused pleaded not guilty, which led to the trial in the case.

In order to prove his case, the complainant examined his attorney Satish Puri as CW1 and thereafter herself stepped into the witness box as CW2 and closed her after charge evidence.

The statement of accused under Section 313 Cr.P.C. was also recorded, in which all incriminating evidence having been adduced by the complainant was put across to the accused. The accused has submitted in defence that he has neither issued the cheque (Ex.C-2) in favour of complainant Bholi Puri nor the cheque was signed by him. The blank cheque was lying with one Raghu Nath, who was Assistant in Government School, Dam Ganj, and used to arrange the committees. The accused had given this cheque to Raghu Nath as security against committees. Raghu Nath had also taken two other cheques as security from the accused. One cheque he misused and after filing the cheque a false complaint was filed by him against the accused, wherein he was acquitted by the Court of the Sessions Judge, Amritsar vide order dated 14.7.2008. Raghu Nath filled the second cheque in the name of one Kuldeep Singh and got the complaint filed through him. However, that case was also dismissed on 15.5.2010.

Learned trial Court after appreciation of the evidence convicted the petitioner vide judgment dated 16.9.2011. Thereafter, the petitioner preferred an appeal and the same was also dismissed by learned Additional Sessions Judge, Amritsar vide judgment dated

30.8.2014 and the quantum of sentence was reduced.

I have heard learned counsel for the parties and peruse the record.

Learned counsel for the petitioner submits that this Court while issuing notice of motion on 23.9.2014 passed the following order :-

“Learned counsel for the petitioner has placed on record copy of draft for an amount of Rs.1,00,000/- in favour of Bholi Puri w/o of Satish Puri.

Notice of motion, returnable for 01.10.2014.

Process dasti as well.”

However, on 1.10.2014, the counsel for the petitioner has filed an application for suspension of sentence and on 10.10.2014, this Court passed the following order :-

“Draft of Rs.1,00,000/- in favour of Bholi Puri w/o Satish Puri has been handed over to learned counsel for the respondent.

The petitioner has moved an application for compounding the offence in view of judgment rendered in ***Damodar S. Prabhu vs. Sayed Babalal H., AIR 2010 (SC) 1907***. The petitioner is directed to deposit 15% of the cheque amount with the High Court Legal Services Authority.

Adjourned to 05.12.2014.

Meanwhile, the sentence imposed by the trial Court on the petitioner – Om Parkash stands suspended during the pendency of this petition and he is ordered to be released on bail on execution of bail bond and also on furnishing surety bond to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Amritsar.”

Vide order dated 10.10.2014, the petitioner was directed to deposit 15% of the cheque amount with the High Court Legal Services Authority and in compliance thereof the petitioner deposited 15% of the cheque amount with the High Court Legal Services Authority. Learned counsel for the petitioner submits that the petitioner has already handed over a demand draft for an amount of Rs.1,00,000/- in favour of Bholi Puri w/o Satish Puri, the complainant-respondent. Learned counsel for the petitioner states that as against one year sentence, the petitioner has already undergone about a month judicial custody.

Learned counsel for the petitioner has filed criminal miscellaneous bearing No. CRM No.30972 of 2014 under Section 320 Cr.P.C. for compounding the offence under Section 138 of the Negotiable Instruments Act as the cheque amount has already been handed over by way of demand draft.

Learned counsel for the respondent does not dispute the fact that the petitioner has handed over a bank draft of Rs.1,00,000/- in favour of complainant and the petitioner has also deposited 15% of the cheque amount with the High Court Legal Services Authority for the purpose of compounding the offence through the instant revision petition.

Consequently, considering the fact that the amount has been deposited by the petitioner with the High Court Legal Services Authority and the law laid down by Hon'ble Apex Court in **Damodar S. Prabhu's** case (supra), the present revision petition is allowed. The impugned order and judgments dated 30.8.2014 and 16.9.2011 are set aside and the criminal complaint filed by the complainant is quashed. The petitioner

shall be released forthwith if not required in any other case.

Disposed of accordingly.

March 30, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE