

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.3202 of 2015 (O&M)
Date of Decision: 31.8.2015

Ram Lal

.....Petitioner

Vs.

Narayan Dass and another

.....Respondents

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CRR No.3209 of 2015 (O&M)

Ram Lal

.....Petitioner

Vs.

Narayan Dass and another

.....Respondents

CRR No.3211 of 2015 (O&M)

Ram Lal

.....Petitioner

Vs.

Narayan Dass and another

.....Respondents

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CRR No.3213 of 2015 (O&M)

Ram Lal

.....Petitioner

Vs.

Narayan Dass and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Surinder Garg, Advocate
for the petitioner.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

These four identical criminal revision petitions between the same parties, filed at the instance of the convict, are being decided together by this common order, as all these four cases are based on similar set of allegations. However, for the facility of reference, facts are being culled out from CRR No. 3202 of 2015.

Brief facts of the case, as recorded by the learned appellate court in para 2 of its impugned judgment, are that the complainant and accused are real brothers and they were running a joint business and property. On 13.1.2011, a compromise was effected between them vide which they separated their business and property. As a result, the entire business had fallen to the share of accused and in lieu of taking entire business, accused issued a post date cheque in question bearing No. 0208713 dated 13.8.2011 alongwith three other post dated cheques dated 13.7.2011, 13.9.2011 and 13.10.2011, each amounting to ₹25 lacs out of his account No. 3324 maintained by him in Faridkot Bathinda Kasheytriya Gramin Bank, Branch Aulakh in favour of the respondent-complainant. The accused assured that the cheques would be honoured on presentation. As per assurance of the accused, complainant

presented the cheque in question dated 13.8.2011 of ₹25 lacs as per the compromise, for its collection through his banker Oriental Bank of Commerce, G.T.Road, Malout, but the same was dishonoured and returned vide memo dated 24.8.2011 with remarks "Account closed". Thereafter, the complainant issued legal demand notice to the accused through his counsel on 3.9.2011 requiring him to make the payment of the cheque within 15 days from the receipt of notice but despite that, accused did not make any payment towards the cheque amount to the complainant, even after the statutory period of 15 days. Thus, a complaint under Section 138 of the Negotiable Instruments Act, 1881, ('the NI Act' for short) was filed against the accused in the Court of Judicial Magistrate 1st Class, Malout.

After going through the preliminary evidence produced on record by the complainant-respondent, learned trial court summoned the accused-petitioner to face the criminal trial for the offence punishable under Section 138 of the NI Act. Accused-petitioner appeared and notice of accusation was served upon him. He pleaded not guilty and claimed trial. With a view to substantiate his allegations, complainant himself appeared in the witness box as CW-1 and also examined Parveen Kumar as CW2, besides producing on record other relevant documentary evidence.

On closing of the evidence of the complainant, statement of accused was recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. Accused denied all the allegations, alleged false implication and

claimed complete innocence. He opted to lead defence evidence and examined himself as DW1. He also examined three more witnesses namely Amar Kumar as DW2, Purshutam Kumar as DW3 and Yogesh Kumar as DW4, besides producing other documentary evidence.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that complainant has duly proved his case, bringing home guilt against the accused. An amount of ₹1 crore (Rs. 25 lacs in each case), was found to be involved. Consequently, learned JMJC, Malout, held the petitioner guilty and recorded his conviction vide impugned judgment of conviction dated 16.8.2014. The convict was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- for the offence punishable under Section 138 of the NI Act in each case. In default of payment of fine, he was further ordered to undergo rigorous imprisonment for one month, in each case.

Feeling aggrieved, convict filed four identical appeals against the abovesaid impugned judgments of conviction and orders of sentence of even date, i.e. 16.8.2014, decided by way of separate judgments of convictions. All the four appeals filed by the petitioner came to be dismissed by the learned Additional Sessions Judge, vide separate judgments of even date, i.e. 14.8.2015. Hence these four identical criminal revision petitions.

Learned counsel for the petitioner submits that petitioner

has been falsely implicated in all these four cases. He further submits that both the courts have misdirected themselves, while not appreciating the evidence in the correct perspective. The cheques in question were not issued by the petitioner to discharge his existing financial liability. Respondent-complainant failed to discharge his initial burden. He concluded by submitting that there was no cogent and convincing evidence available on record which can be said to be sufficient to record the conviction of the petitioner. In the alternative, learned counsel for the petitioner submits that miscellaneous application filed in each case, for ordering all the sentences of imprisonment recorded against the petitioner, to run concurrently, may be allowed. He prays for allowing the present petitions.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the cases and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that keeping in view the given fact situation, all these four cases have not been found to be fit cases warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

At the very outset, learned counsel for the petitioner was asked, as to whether the petitioner is ready to settle the matter amicably, by paying cheque amount or agreed amount to the complainant-respondent, dispute being between the real brothers. He categorically stated that he has got the instructions to say that

petitioner does not intend to pay any amount. In this view of the matter, this Court was left with no other option except to proceed further to decide these cases on merits.

A bare reading of both the impugned judgments would show that both the learned courts have examined, discussed and appreciated each and every relevant aspect of the matter, in the correct perspective, before arriving at their respective judicious conclusions. It is the settled proposition of law that, while exercising the revisional jurisdiction, re-appreciation of evidence at the hands of this Court, is not permissible. Having said that, this Court feels no hesitation to conclude that both the learned courts below committed no error of law, while passing their respective impugned judgments and the same deserve to be upheld.

The learned Additional Sessions Judge re-appreciated the entire documentary as well as oral evidence before recording his cogent findings. The relevant findings recorded by the learned appellate court in para 19 and 20 of its impugned judgment deserve to be referred and the same read as under:-

“Learned counsel for the appellant further argued that the cheque in question was given by the accused to Kshetria Gramin Bank with whom he stood guarantor for Narayan Dass and after repayment of that loan, the bank has returned the documents to Narayan Dass and Narayan Dass has misused the cheque in question alongwith

other three cheques. The appellant/accused has failed to prove on record that he has given blank signed cheques to Kshetria Gramin Bank as guarantor for the respondent/complainant and those cheques after the repayment of the loan by the complainant were returned to the complainant and the complainant misused the same. The stand of the accused is falsified from the testimony of DW4 an official of Satluj Gramin Bank. He deposed that Satluj Gramin Bank and he has specifically proved on record the application Ex.DW4/A vide which the accused has written to the bank for cancellation of the cheque in dispute alongwith other cheques as cheque book has been lost from him. Accused has nowhere mentioned in the application that he has furnished blank signed cheques with the bank as guarantor for Narayan Dass and that the bank has not returned the same. Yogesh Kumar DW-4 has produced on record the documents executed at the time of availing the loan by Narayan Dass, Ex.DW4/A is the sanction letter, Ex.DW4/H is the credit report, Ex.DW4/I is account statement of the borrower and Ex.DW4/J/I is the account statement and he has specifically deposed that besides these documents, no other document

was executed by the borrower of guarantor. He has further deposed that there is no procedure in the bank of obtaining the blank signed cheque at the time of advancing of loan. So, the version of Ram Lal that he has given blank signed cheque book to the bank, when he stood guarantor for Narayan Dass and Narayan Dass has misused those cheques is falsified from his own letter Ex.Dw4/A, wherein he has specifically stated that the cheques were lost from his custody. Version of the appellant/accused with regard to loss of cheque book is contrary to his defence plea taken in the present case that he has furnished the cheque book duly signed to the bank when he stood guarantor for Narayan Dass.

Furthermore, he is taking the plea that he furnished the blank cheque book to the bank after signing when he stood guarantor and later on he has moved an application Ex.DW4/A regarding loss of the cheque book. If later version of the accused/appellant is admitted, then it is not explained by the accused/appellant that why he has signed all the blank cheque in the cheque book as he has not denied his signatures on the cheques in dispute. So, the defence plea of the

accused/appellant was rightly disbelieved by the learned trial court.”

During the course of arguments, when a pointed question was put to the learned counsel for the petitioner as to how both the learned courts below have gone wrong either on facts or in law, he had no answer and rightly so, it being a matter of record. Further, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality in either of the impugned judgments of conviction, so as to convince this Court to take a different view than the one taken by both the learned courts below. In such a situation, no interference is warranted at the hands of this Court and the impugned judgments deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that all the four criminal revision petitions are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

Coming to the miscellaneous applications moved in each case, with a prayer to order to run all the sentences concurrently, this Court is of the view that taking into consideration the totality of facts and circumstances of the case and also keeping in view the fact that dispute is between real brothers, it is just and expedient to order all the four sentences to run concurrently, while invoking the inherent

jurisdiction of this Court, so as to secure the ends of justice. It is so said, because it would be too harsh to sentence the applicant-petitioner to undergo rigorous imprisonment for 8 years, particularly when petitioner in all these cases has been tried for the offence punishable under Section 138 of the NI Act. Thus, ends of justice will be adequately met if all the four sentences are ordered to run concurrently and the same is hereby ordered. Miscellaneous applications with the prayer to order all the four sentences to run concurrently, are allowed.

Resultantly, with the abovesaid observations made and directions issued, all these four criminal revision petitions stand dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

31.8.2015
Ak Sharma