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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3521-2015 [O&M]

Date of Decision : Sept. 18th, 2015

Rajinder Virk

.... Petitioner

Versus

The Punjab State Cooperative Supply & Marketing Federation
Limited and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Ms. Gursharan K. Mann, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present revision petition is against the judgment of conviction and order of sentence, dated 30.09.2014 recorded by Chief Judicial Magistrate, Sangrur whereby revisionist – Rajinder Virk was held guilty and convicted for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [for short “the Act”] and sentenced to undergo Rigorous Imprisonment for a period of one year and to pay fine of Rs.3,000/-. He was also directed to pay an amount of Rs.50,00,000/- to the complainant as compensation.

First Appellate Court vide its order dated 18.8.2015 maintained the judgment of conviction, but ordered to release the revisionist on probation for a period of one year and to pay the amount of cheque by way of bank draft/pay order/cheque in the following manner :-

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“(2). he shall pay the amount of cheque to the complainant department by way of bank draft/pay order/cheque :-

- a). Rs. Fifteen Lacs on or before 20.08.2015,
- b). Rs. Fifteen Lacs on or before 20.10.2015,
- (c). Rs. Ten Lacs on or before 20.12.2015,
- (d). Rs. Ten Lacs on or before 20.02.2016.

(3). And in case of default, he shall have to undergo the sentence awarded by the trial Court.”

Aggrieved of passing of judgments by the Courts below, the revisionist is before this Court.

Learned counsel for the revisionist mainly contended that the cheque was given only as a security cheque as earlier there were business transactions between the parties. In support of his arguments, reliance has been placed on a decision of Hon`ble Supreme Court in **M.S.Narayana Menon @ Mani Vs. State of Kerala & Anr. 2006 [6] SCC 39.** The only remedy available with the respondent is to file a recovery suit because the matter in litigation is primarily a civil dispute. Reliance has also been placed upon judgment from a Co-ordinate Bench **Ramkaran Meena Vs. Indo Farm Industries Limited, 2013 (1) Law Herald 518** wherein such a view was taken.

Having considered the submissions made by learned counsel for the revisionist, this Court is of the considered view that the plea taken by learned counsel for the petitioner that cheque in question was issued as a 'security cheque' was also taken before the Courts below. The same plea was examined by the Courts below and rightly negated. Learned trial Magistrate rightly placed reliance on the provisions of Section 139 of the Act whereby raising presumption that unless the contrary is proved that the

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holder of a cheque shall be presumed to have received the cheque in discharge of any amount legally due towards him. In the present case, cheque Ex. C/1 was admittedly issued by present revisionist, Rajinder Virk on behalf of M/s Guru Angad Rice Mill Mandvi. More so, the revisionist could not dispute the fact that the cheque leaf was from the cheque book issued to him by the bank. At no point of time, any report was made to the police regarding theft of said cheque leaf. Learned trial Magistrate rightly observed that there is nothing on the file that present revisionist would rebut the legal presumption against him. Said plea was also negated by the first Appellate Court.

As regards to filing of civil suit on account of amount due, it is not disputed that complainant-respondent had option to file civil suit for recovery as well, but at the same time, the respondent as complainant and holder of the cheque in question was legally competent to file a complaint under Section 138 of the Act, which has rightly been done by the complainant and remained successful during trial to prove its case.

As regards to the order of sentence, learned Courts below have already taken most lenient view. Learned trial Magistrate had passed order against the revisionist to undergo RI for one year and also to make payment of Rs.50.00 lakhs as compensation to the complainant. First Appellate Court reduced the sentence and ordered release of the petitioner on probation on the request of present revisionist only. First Appellate Court has also granted him substantial relief thereby allowing the present revisionist to make payment of the amount of cheque in installments. There is absolutely no ground to set-aside the said order or to take a further lenient view on the point of sentence. The judgment of conviction

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and order of sentence call for no interference by this Court in the revisional jurisdiction.

In view of the above discussion, upholding the judgment of conviction and order of sentence passed by the Courts below, the revision petition is dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

Sept. 18th, 2015
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