

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-3793-2014

Date of decision:1.12.2015

Gursewak Singh

...Petitioner

Versus

Bhupinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.R.M.Sharma, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition, at the instance of the complainant, is directed against the impugned judgment dated 21.8.2014 passed by the learned Additional Sessions Judge, Sangrur, whereby appeal of the convict was dismissed with modification, releasing the convict-respondent on probation, upholding the judgment of conviction dated 4.4.2012 passed by the learned Sub Divisional Judicial Magistrate, Moonak.

Brief facts, as noticed by the learned trial Court in para 1 of its judgment, are that accused-Bhupinder Singh (respondent No.1 herein) borrowed money from the complainant-Gursewak Singh (petitioner herein) and in discharge of his liability, he issued cheque dated 15.4.2011 for Rs.2.50 lacs drawn on ICICI Bank Ltd., Sunam and when the cheque was presented by the complainant-petitioner before his banker for encashment, it was dishonoured with the remarks "Funds insufficient" vide memo dated 19.4.2011. Thus accused committed an offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short). Notice dated

9.5.2011 was also served upon accused but he did not make any payment.

After recording preliminary evidence, convict-respondent was summoned to face trial under Section 138 of the NI Act. On appearance of accused-respondent, notice was issued to him, to which he pleaded not guilty and claimed trial.

In support of his case, complainant examined only one witness.

On closing the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. He denied the allegations, alleged false implication and claimed complete innocence. In his defence, accused examined as many as five witnesses

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case bringing home the guilt against the accused. Accordingly, accused was convicted for the offence punishable under Section 138 of the NI Act, vide judgment dated 4.4.2012 and accordingly convict was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2000/- and in default of payment of fine, he was ordered to further undergo simple imprisonment for a period of five days.

Dissatisfied, the impugned judgment of conviction and order of sentence were challenged by the convict-respondent, by way of appeal, which also came to be dismissed by learned Additional Sessions Judge, however, with modification, releasing the convict-respondent on probation, vide impugned judgment dated 21.8.2014. Hence this criminal revision petition, at the hands of complainant.

Learned counsel for the petitioner submits that the learned first appellate court committed a serious error, while granting the benefit of probation to the convict-respondent. He further submits that since the complainant has duly proved his case bringing home the guilt against the convict-respondent and he was rightly convicted by the learned trial Court, he was not entitled for the benefit of probation, which has been illegally granted to him by the learned first appellate court. He prays for setting aside the impugned judgment to the extent it has granted the benefit of probation to the convict-respondent, by allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that no interference is warranted, 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.

A bare perusal of the impugned judgment would show that the learned first appellate court did not exceed its jurisdiction, while granting the benefit of probation to the convicts-respondents. Sufficient and cogent reasons have been assigned. The learned first appellate court has not been found to have committed any error of law, while passing the impugned judgment and the same deserves to be upheld.

The above-said view taken by this Court also finds support from the following judgments:-

1. M.C.D. v. State of Delhi and another, 2005 (4) SCC 605;

2. Ramesh Dass v. Raghu Nath and others, 2008(2) SCC

(Crl.) 470;

3. State through CBI, Anti Corruption Branch, Chandigarh

v. Sanjiv Bhalla and another, 2014 (8) Scale 377;

4. Sant Lal v. State of Haryana, 1999 (2) RCR (Crl.) 563

(P&H);

5. Chuni Lal v. State of Haryana, 2006(1) RCR (Crl.) 844;

6. State of Punjab v. Harinder Singh @ Raju, 2008 (2) RCR

(Crl.) 294 P&H);

7. CRR No.97 of 2002 (Mani Ram v. State of Punjab),

decided on 30.7.2010 (P&H);

8. CRR No.1385 of 2012 (Chander Parkash v. State of UT

Chandigarh), decided on 15.5.2012 (P&H); and

9. CRR No.1289 of 2015 (Pardeep and others v. State of

Haryana), decided on 30.4.2015.

The relevant observations made by the Hon'ble Supreme Court in para 27 of its judgment in **Sanjiv Bhalla's** case (supra), which can be gainfully followed in the present case, read as under:-

*“These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift - from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition *[18] or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten.*

****[18] Probation of Offenders Act, 1958 Section 3:***

Power of court to release certain offenders after admonition. - When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation. - For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4."

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgment passed by the learned first appellate court, so as to enable this Court to interfere in the impugned judgment, while exercising its revisional jurisdiction taking a different view than the one taken by the learned first appellate court. In fact, the impugned judgment passed by the learned first appellate court has been found to be factually correct as well as legally justified and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant criminal revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present criminal revision petition stands dismissed, however, with no order as to costs.

1.12.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE