

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Revision No.3845 of 2014(O&M)

Date of Decision: February 19, 2015.

Baldev Singh

..... PETITIONER (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. M.S.Rai, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Petitioner – Baldev Singh has preferred this revision petition impugning his conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act') recorded by the learned courts below.

Complaint under Section 138 of the Act read with Section 420 IPC was filed against the petitioner by complainant – Balkar Singh on the allegations that petitioner-accused had received a sum of ₹6,50,000/- towards earnest money for sale of land. He did not come present for execution of the sale-deed on the stipulated date i.e., 20.06.2006. It thereafter came to light that

the petitioner was not competent to alienate the property in question as there was a ban imposed by the Government for its sale for a period of 20 years from the date of its purchase. The said period of 20 years had not lapsed. Due to the intervention of respectables, settlement was arrived at between them wherein, the petitioner issued a cheque bearing No.408624 dated 01.06.2007 amounting to ₹6,50,000/- in favour of the complainant in discharge of the said liability towards the complainant. This cheque was dishonoured by the bank due to 'Insufficiency of Funds' in the petitioner's account.

Complainant filed the present complaint under Section 138 of the Act before the learned trial court. Petitioner-accused was summoned to face trial. Evidence was led. Petitioner denied all the allegations levelled against him and led defence evidence.

Learned trial court on going through the entire evidence found petitioner guilty for the commission of offence punishable under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of two years, besides, pay a fine of ₹10,000/- and in default thereof, to further undergo rigorous imprisonment for one month.

Appeal preferred by the petitioner was dismissed on 23.09.2014 by the learned Additional Sessions Judge, Fazilka.

Hence aggrieved, the present revision petition has been filed challenging the abovesaid judgments.

At the initial stage, it was argued by the learned counsel for petitioner that application dated 28.08.2014 had been moved by the petitioner for dismissal of the original complaint before the appellate court on the ground

that complainant, Balkar Singh had passed away during the pendency of the appeal (Annexure P3). It was prayed that in view of the demise of complainant, the complaint against him should be dismissed.

It is relevant to note that the petitioner has been convicted and sentenced for the offence punishable under Section 138 of the Act. Passing away of the complainant during the pendency of appeal cannot, in any manner, be construed to mean that the complaint against him should be dismissed. The application is clearly misconceived and has rightly been dismissed by the learned appellate court.

On 10.02.2015, this matter had been adjourned on request of learned counsel for the petitioner to enable him to ascertain from the petitioner whether he is willing to make the payment of the cheque amount with interest.

Learned counsel for the petitioner informs, on instructions, that the petitioner is not ready and willing to pay the cheque amount.

I have heard learned counsel for the petitioner on the merits of the case and gone through the file.

It has been held by the learned courts below on the basis of clear and cogent evidence on record that the cheque in question has been issued by the petitioner-accused in discharge of his liability towards the complainant. Arguments of the learned counsel that the cutting on the cheque proves the falsity of the complainant's version or that the cheque was in fact snatched and it was the complainant who was not ready and willing to execute the sale deeds, are untenable in the face of the concurrent findings of fact returned by both the learned courts below on a proper appreciation of evidence. Petitioner has been

unable to rebut the presumption that cheque dated 01.06.2007 was issued by him to the complainant in discharge of his liability. No irregularity or illegality has been pointed out in the impugned judgments, which would warrant interference by this Court in exercise of its revisional jurisdiction. It is a settled position that unless the findings are shown to be perverse or based on a misreading of evidence or by ignoring relevant evidence on record, a revisional court would not enter the realm of findings of fact. Complainant has successfully proved his case.

At this stage, when the Court is not inclined to interfere, learned counsel for the petitioner submits that the sentence imposed upon the petitioner is not commensurate with the gravity of the offence and prays for reduction of the same.

It is to be noted that the cheque in question had been issued in the year 2006 by the petitioner-accused in discharge of his liability towards the complainant. It has been proved on record that the petitioner had indeed taken the amount in dispute from the complainant and has failed to discharge his liability. Despite opportunity being afforded by this Court, the petitioner is still not ready and willing even as on today to discharge his liability. It has been held by Hon'ble Supreme Court in **Sumer Singh v. Surajbhan and others, 2014(7) SCC 323** that court should not be moved by misplaced sympathetic considerations which may be unwarranted in the facts and circumstances of the case. The sentence should reflect the conscience of the society. Though the said case dealt with conviction of the accused under Sections 323/326 IPC, the ratio is very much applicable to the facts and circumstances of the present case.

It has specifically been held in Sumer Singh's case (supra) that:

“It is seemly to state here that though the question of sentence is a matter of discretion, yet the said discretion cannot be used by a court of law in a fanciful and whimsical manner. Very strong reasons on consideration of the relevant factors have to form the fulcrum for lenient use of the said discretion.”

No mitigating or extenuating circumstance has been pointed out by the learned counsel for petitioner which would justify reduction of the sentence imposed upon the petitioner.

This petition is accordingly dismissed.

February 19, 2015.
'om'

(**LISA GILL**)
JUDGE