

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

**CRR No. 4039 of 2014 (O&M)
Date of decision:- May 07, 2015**

Rajinder Singh

...Petitioner...

versus

Vishal Dingra

...Respondent..

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Bhavyadeep Walia, Advocate,
for the petitioner.

Mr. Chanchal K. Singla, Advocate,
for the respondent.

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?

JASPAL SINGH, J.

This revision has been directed under Section 401 of the Code of Criminal Procedure (for short, "Cr.P.C.") by Rajinder Singh-revisionist-petitioner, feeling dissatisfied against order dated October 01, 2014 passed by Ld. Additional Sessions Judge (Fast Track Court), Patiala, whereby appeal preferred by him challenging the judgment and order dated July 09, 2013 passed by the Court of JMIC, Patitla convicting and sentencing petitioner to undergo rigorous imprisonment for a period of two years and compensation to the tune of ₹3 lac for commission of an offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'Act'), was dismissed.

2. In response to the notice of motion issued by this Court, Mr. Chanchal K. Singla, Advocate appeared and represented the respondent-complainant.

3. While assailing the impugned judgments passed by both the courts below, it has been argued with vehemence by learned counsel for petitioner that same are absolutely against the settled canons of law. Mis-appreciation of evidence as well as legal proposition has resulted into miscarriage of justice. In fact, complainant has miserably failed to produce on record either oral or documentary evidence to prove the fact that debt of ₹6 lac, which is the subject matter of the cheque in question was legally recoverable. Ld. trial court as well as Id. appellate court did not consider and appreciate the main point while sentencing and convicting the petitioner. Even, no findings have also been recorded by either of the courts below on this point. In the absence of findings, conviction and sentence of the petitioner is not legally sustainable. Moreover, both the courts below have simply relied upon the mere proof of cheque Ex.C-1 and documents, which prove the dishonour of cheque and legal notice. It is the case of petitioner right from beginning that though cheque was issued by him but it was blank and was only bearing his signature. Subsequently, complainant filled up a huge amount of ₹6 lac in the blank cheque. It is well settled that if complainant fails to prove the passing of the consideration and further that cheque was issued in-discharge of legal liability and further that complainant has financial capacity to advance the loan, offence under Section 138 of the Act cannot be said to have been

established.

4. To buttress his contention, learned counsel for the petitioner has placed reliance upon various pronouncements captioned as ***“Murtaza Mohammad Yusuf vs. Gulam Nabi Abdul Rehman 2010 (3) CCC, 245 (Bombay)”***, ***“General Autho Sales vs. Vijaylakshmi”, 2005 Crl. Journal 1454*** as well as ***“Ramdas s/o Khelunaik vs. Krishnand s/o Vishnu Naik”, 2014 (4) RCR (Criminal) 282 (SC).***

5. While concluding his arguments, it has been submitted by learned counsel for petitioner that since, complainant-respondent has failed to prove the various ingredients which constitute an offence under Section 138 of the Act, conviction and sentence awarded by Id. Magistrate and upheld by appellate court are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant revision.

6. On the other hand, learned counsel for respondent, Mr. Chanchal K. Singla, has strongly supported the judgments passed by both the courts below submitting that same are absolutely in consonance with the legal proposition of law applicable to the facts and circumstances of the case in hand. Since, petitioner has categorically admitted issuance of cheque as well as receipt of notice issued under Section 138 of the Act, a presumption arises that cheque in question has been issued in-discharge of legal debt. The judgments relied upon by learned counsel for petitioner, during the course of arguments are not applicable in the facts and circumstances of the case in hand and are distinguishable on facts.

No straight jacket formula can be applied to rebut the presumption. Instant revision being devoid of merits is liable to be dismissed.

7. This Court has given an anxious thought to the aforesaid rival submissions made by learned counsel for the parties and has meticulously gone through the records available.

8. Before proceeding further to decide the instant revision on merit, it would be desirable to highlight that the scope and extent of revisional jurisdiction of the High Court in dealing with order passed by trial court and upheld by appellate court is limited and revisional jurisdiction should be exercised in exceptional cases where there was some glaring defect in the procedure or there was a manifest error on a point of law and consequently, there had been a flagrant miscarriage of justice.

9. Adverting to the facts of the case in hand, the submissions which have been made by learned counsel for petitioner challenging conviction and sentence of petitioner have already been dealt with by Id. Magistrate, which have also been upheld by Id. appellate court. Since, petitioner has categorically admitted issuance of cheque to respondent-complainant, which on presentation stood dishonoured. There is a presumption that cheque was issued in discharging of his legal liability. Rather, in instant revision petition, it can be said that there is no legal flaw in the impugned judgments passed by both the courts below. The pronouncements relied upon by learned counsel for petitioner referred in para No. 4 of this judgment are distinguishable on facts.

Moreover, no formula can be laid down with regard to the passing of

an observation in one case by applying to the another case. Each case has to be dealt with on its peculiar facts and circumstances and the evidence available on file.

10. It is also well settled that complaint under Section 138 of the Act can't be dismissed simply on the ground that complainant has failed to prove source of income or source of amount, which has been advanced. Moreover, case of petitioner is that he had only borrowed a sum of ₹6000/- from complainant when he issued a blank cheque but subsequently, the same has been converted to an amount of ₹6 lac. The amount of ₹6000/- has also been allegedly repaid by petitioner to respondent-complainant but to the utter surprise, no receipt in this regard was obtained. Even, no effort has also been made by petitioner to get the cheque returned from complainant. Such a lapse and omission on the part of petitioner is suggestive of the fact that defence plea, which has been put by him is a concocted one.

11. In the light of what has been discussed above, this Court does not find any merit as far as conviction of petitioner, under Section 138 of the Act is concerned.

12 Now, question which survives for determination is whether imposition of sentence of rigorous imprisonment for two years is legally justified or is on higher side. The question with regard to imposition of appropriate or adequate sentence and the principles to be adopted came up for consideration before the Hon'ble Apex Court in case ***“Alister Anthony Pareira v. State of Maharashtra”***;

2012)1) RCR (Criminal) 524, in which it was observed as under:-

“Sentencing is an important task in the matters of crime.

One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crimedoer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

13. Similarly, in case “**State of M.P. v. Babulal and others; 2013 (4) RCR (Criminal) 92**, the law on issue of sentence was summarized as under:

“In view of the above, the law on the issue can be summarised to the effect that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. The most relevant determinative factor of sentencing is proportionality between crime and punishment keeping in mind the social interest and consciousness of the society. It is a mockery of the criminal justice system to take a lenient view showing

misplaced sympathy to the accused on any consideration whatsoever including the delay in conclusion of criminal proceedings. The Punishment should not be so lenient that it shocks the conscious of the society being abhorrent to the basic principles of sentencing. Thus, it is the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages a criminal and as a result of the same society suffers.”

14. Adverting to the facts of the case in hand, the imposition of sentence for a period of two years in the case in hand appears to be on higher side and cannot be said to be adequate, just or proportionate and commensurative with the nature of the offence committed by the petitioner. Moreover, Court should strike a proper balance while awarding sentence keeping in view the nature and gravity of offence. So, taking into consideration various aspects of the case, this Court is of the considered view that imposition of sentence for a period of two years cannot be said to be commensurative with offence complained of and deserve to be mitigated. Accordingly, sentence awarded by Id. Magistrate, which has been upheld by Id. appellate court is modified from rigorous imprisonment of two years to rigorous imprisonment for one year. However, with no modification in the change of compensation clause.

15. With the aforesaid modification, the criminal revision preferred by petitioner is dismissed by upholding the conviction of the petitioner.

May 07, 2015
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(JASPAL SINGH)
JUDGE