

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

**CRR No.1010 of 2012 (O&M)
Date of Decision: December 07, 2016**

M/s Coats and Chemicals through its Proprietor Sh.Vipin Sharma
...Petitioner

VERSUS

M/s Paramount Powder Pvt. Ltd. through its Manager Sh.S.P.Singh and
another
...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.C.L.Sharma, Advocate
for respondent No.1- with
S.P.Singh, respondent No.1-in-person.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner M/s Coat and Chemicals through its Proprietor Sh.Vipin Sharma against respondents M/s Paramount Powder Pvt. Ltd. through its Manager Sh.S.P.Singh and State of Haryana, challenging the impugned judgment of conviction and order of sentence dated 22.12.2010 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the petitioners were convicted under Section 138 of the Negotiable Instruments Act and sentenced to pay the compensation to the complainant equivalent to double the amount of cheque i.e. ₹4,44,030/- and also to undergo simple imprisonment for a period of one year and also

challenging the judgment dated 21.03.2012 passed by learned Sessions Judge, Gurgaon, vide which appeal filed by petitioner was dismissed.

Notice of motion was issued and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petition.

From the record, I find that a complaint was filed by M/s Paramount Powder Pvt. Ltd. through its Manager S.P.Singh against accused M/s Coats & Chemicals through its Proprietor Vipin Sharma under Section 138 of the Negotiable Instruments Act and Sections 406 and 420 IPC. The brief facts of the complaint as noted down in the judgment passed by learned Judicial Magistrate Ist Class, Gurgaon, are as under:-

“2. Briefly stated the facts of the complaint as alleged by the complainant are that the accused is proprietor of M/s Coats and Chemicals, SCO 475-76, Sector-35, Chandigarh, had been purchased the Powder coating from the complainant's company on credit basis and issued a cheque bearing No.962149 dated 30.1.2004 Bank of India, Sector Branch Chandigarh for Rs.2,22,015/- in favour of complainant's company i.e. M/s Paramount Powder Pvt. Ltd. It is further pleaded that above mentioned complainant deposited above mentioned cheque in his banker's Syndicate Bank, Mayapuri, new Delhi on 9th February 2004 in his account which was forwarded the said cheque to the Banker of the accused which was returned as dishonoured due to reason with “Insufficient Funds” and complainant came to know about the same through his bank on 17.2.2001. The original cheque bearing No.962149 dated 30.1.2004. The complainant informed the accused about the dishonouring of the above mentioned cheque on telephone to the accused but the accused gave evasive reply and did not take their responsibilities and liabilities for which the accused were legally bound to. It is further pleaded that complainant also got served a legal notice upon the accused regarding the dishonouring of the above mentioned cheques, on dated 23.2.2001 through registered post at two different addresses one of the company address vide postal receipt No.1566 of dated 23.2.2004 and one of its Prop. Sh.Vipin Sharma's house address vide postal receipt No.1565 dated 23.2.2001 and one acknowledgment of registered AD receipt of the said legal notice was not received back and one registered AD was received back with remarks

“left returned to sender by the counsel for the complainant. Accused did not give any reply of the said legal notice nor they paid the amount in question to the complainant, Hence, this complaint.”

Learned Judicial Magistrate Ist Class, Gurgaon, after appreciating the evidence, convicted and sentenced the petitioners as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Sessions Judge, Gurgaon, vide judgment dated 21.03.2012.

Aggrieved from the above-said judgments, present revision petition has been filed.

At the time of arguments, learned counsel for the petitioner has not argued on merits and has only argued regarding quantum of sentence. He contended that the complainant has already received amount of ₹2,22,015/- in terms of direction of this Court dated 17.03.2015, as rectified on 24.04.2015 and amount of ₹1,75,000/- has been paid in the Court to learned counsel for respondent No.1, who was present along with respondent No.1 S.P.Singh.

Earlier cheque amount was paid and now further ₹1,75,000/- has been paid by way of two bank drafts i.e. one draft of ₹1,50,000/-, second draft of ₹21,000/- and ₹4000/- in cash to respondent No.1 and the matter has been settled between the parties. Learned counsel for respondent No.1 stated that respondent No.1 has no objection if the sentence of the petitioner is reduced.

Learned counsel for the petitioner only prayed for reduction of sentence and has stated that petitioner was not ready to pay 15% of the amount as held in ***Damodar S. Prabhu Vs. Sayed Babalal H, 2010(5) SCC***

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the case and in view the fact that payment of the cheque amount along with additional amount has been paid to respondent No.1 and further, in view of the fact that the petitioner has already undergone imprisonment of 1 month and 2 days, the sentence imposed upon the petitioner is reduced to the sentence already undergone by him. The amount of compensation granted by the trial Court shall be treated as paid.

Resultantly, the present revision petition stands partly allowed.

Since, Vipin Sharma, is on bail, his bail/surety bonds stand discharged.

December 07, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No