

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 2235 of 2014 (O&M)
DECIDED ON: MAY 18, 2016

BANTI BASRA @ RAVINDER SINGH BASRA

....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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?

Present: Mr. Manoj Dhiman, Advocate
for the petitioner.

Mr. K.S. Pannu, DAG, Punjab.

Mr. D.S. Kahlon, Advocate
for respondent No.2.

JASPAL SINGH, J

CRM No. 22073 of 2014

Application is allowed, as prayed for.

Annexure A-1 is taken on record, subject to all just exceptions.

CRR No. 2235 of 2014 (O&M)

Challenge in this revision petition is to the judgment dated July 03,

2014 passed by learned Sessions Judge, Pathankot upholding the judgment of

conviction and order of sentence dated November 23, 2011 passed by learned Sub Divisional Judicial Magistrate, Pathankot whereby, petitioner has been convicted under Section 138 of Negotiable Instruments Act (for short 'Act') and sentenced to undergo RI for a period of two years alongwith fine and in default thereof, to further undergo RI for a period o three months in a complaint case No. 158/02 of June 08, 2009 captioned as ***Surinder Kaur vs. Banti Basra***.

2. Briefly stated the facts giving rise to the instant revision petition are that petitioner issued a cheque No. 696242 dated October 30, 2008 amounting to ₹1,60,000/- in order to discharge of his legal liability, drawn on the Hindu Cooperative Bank Limited, Model Town Branch, Pathankot. On presentation, it was dishonoured and returned vide memo dated March 26, 2009 with remarks “insufficient funds”. Accordingly, after the issuance of notice under Section 138 of the Act, a complaint was presented in the Court of Sub Divisional Judicial Magistrate, Pathankot.

3. On the strength of preliminary evidence brought on record by the complainant, petitioner was summoned to face trial under Section 138 of the Act. In response to which, he appeared and resisted the complaint.

4. After hearing learned counsel for the parties and appraisal of evidence brought on record, petitioner was convicted and sentenced under Section 138 of the Act vide judgment dated November 23, 2011 passed by learned Sub Divisional Judicial Magistrate, Pathankot. Appeal preferred against the said judgment of conviction and order of sentence was also dismissed by lower Appellate Court vide its judgment dated July 03, 2014.

5. While assailing the impugned judgments passed by both the courts

below, it has been argued with vehemence by learned counsel for the petitioner that the same are absolutely against the evidence available on file and settled cannons of law as well as legal proposition. Misappreciation of evidence has resulted into miscarriage of justice. Even as per the case of complainant she had deposited the amount in question with M/s S.F. Finance Company Private Limited. The cheque issued to the complainant was also that of the company itself. The fact is also evident from Ex. C-3. At the most, cheque was signed by the petitioner being its Managing Director. Thus, the primary liability to pay the amount of the cheque is that of the company and not of the petitioner in his individual capacity.

6. Learned counsel for the petitioner further contends that complaint filed by the complainant against the petitioner is that he is the proprietor of the company. In fact, there can be no proprietor of the company, which only can have the Directors. A company is infact a separate legal entity and in the absence of the company as one of the accused, the complaint is liable to be dismissed. Moreover from a bare perusal of the legal notice, it is evident that the same has been sent to the petitioner only that too, as a proprietor of the company. The company was never served with any notice as required under Section 138 of the Act. Until and unless, company is held guilty, petitioner cannot be fastened with any liability to pay the cheque amount. He cannot be prosecuted in the absence of company on whose behalf cheque has been issued. Similarly, no notice has also been issued either on the company or its Director(s). Therefore, the complaint as well as further proceedings initiated on its basis and the conviction and sentence imposed upon the petitioner are liable

to be set aside. Since, both the courts below did not take into consideration the aforesaid legal aspect, conviction and sentence are illegal on the face of it. Thus, impugned judgments are liable to be set aside.

7. On the other hand, learned counsel for the respondents have supported the impugned judgments. They have submitted that there is no infirmity or illegality in the impugned judgments passed by both the courts below. As such, there is no reason to meddle with the findings and conclusions arrived at by both the courts below by this court.

8. After bestowing due consideration, appraisal of evidence as well as scrutinizing the impugned judgment(s) and order of conviction, this Court does not find any legal and factual substance in the submissions put forth by learned counsel for the petitioner.

9. Undoubtedly, the cheque Ex.C-1 amounting to ₹1,60,000/- was issued by the petitioner though allegedly on behalf of the company i.e. S.F. Finance Company Private Ltd. but admittedly, on its presentation, it was dishonoured vide memo dated March 26, 2009 with the remarks “insufficient funds”.

10. As far as the main contention put forth by learned counsel for the petitioner that in the absence of company, petitioner cannot be fastened with any liability, is concerned, this Court does not find any merit in it for a simple reason that though cheque has been issued by the petitioner on behalf of the company. But when a dispute arose in respect of the cheque in question in between the parties, after it was dishonoured, petitioner settled the dispute. An agreement dated April 20, 2007 in this regard was reduced into writing, which

was not only signed by him but also witnessed by Narain Singh, Social Worker and Parmjeet Singh, Sarpanch. He also undertook to pay the cheque amount and while showing his bona fide, he issued 18 cheques worth ₹5,000/- each, which were to be presented for encashment on monthly basis. The cheques so issued by the petitioner are available on lower court's record. Some of the cheques were presented for encashment but to the utter surprise, none of those cheques could be encashed and were dishonoured.

11. So, in the above-referred facts and circumstances, it can be safely concluded that the petitioner took the responsibility to make the payment of amount in question in an individual capacity. Even otherwise, the question as to whether the Managing Director can be held responsible under Section 138 of the Act in the absence of impleading the firm or the company came up for hearing before Hon'ble Apex Court in case **Anil Honda vs. Indian Acrylic Ltd; 2000 (1) Apex Court Judgments 01 (SC)** and it was held that the provision of Section 141 of the Act does not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons, who falls within the second and third categories mentioned in the said provision. Even, if the prosecution proceedings against the company were not taken or could not be continued, it is no bar for proceeding, against the other person(s) falling within the provision of sub section (1) and (2) of Section 141 of the Act.

12. Similarly, in **M/s Recon Agrotech Ltd. vs. M/s Tadikonda Trading Corporation and others; 2009 (3) Civil Court Cases 603**, it was held that Managing partner concerned with the affairs and management of the firm can be prosecuted without prosecuting the firm.

13. Adverting to the facts of the case in hand, issuance of cheque Ex.C1 by the petitioner is not a disputed question or fact which can otherwise be termed to have been issued in discharge of legally enforceable debt. Thus, this court does not find any infirmity or illegality in the impugned judgments passed by both the courts below.

14. As an upshot of the aforesaid discussion, instant petition being devoid of merit is dismissed. Since the petitioner is on bail, copy of this order be sent to the concerned Chief Judicial Magistrate for securing the presence of the petitioner to serve out the sentence imposed upon him.

MAY 18, 2016
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(JASPAL SINGH)
JUDGE