

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.2455 of 2015 (O&M)

Date of Decision: 02.02.2016

Paramjit Singh

...Petitioner(s)

Versus

Shiv Kumar

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

- 1. Whether reporters of local newspapers may be allowed to see judgment?*
- 2. To be referred to reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present:- Mr. L.M. Gulati, Advocate
for the petitioner.

Mr. V.K. Sandhir, Advocate
for the respondent.

HARI PAL VERMA J,

CRM-21336-2015:

This is an application under Section 5 of the Limitation Act for condonation of delay of 5 days in filing the present petition.

For the reasons mentioned in the application, delay of 5 days in filing the present revision petition is condoned.

The application stands disposed of.

Criminal Revision No.2455 of 2015:

The petitioner – Paramjit Singh has filed the present revision petition against judgment dated 30.3.2015 passed by learned Additional Sessions Judge, Amritsar, whereby his appeal against the judgment of conviction and sentence dated 17.2.2014 passed by Judicial Magistrate Ist Class, Amritsar was dismissed.

Learned trial Court vide judgment dated 17.2.2014 has convicted the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 and Section 357(3) CrPC and sentenced him as under:-

- “i) Under Section 138 Negotiable Instruments Act, Convict Paramjit Singh shall undergo rigorous imprisonment for a period of one year.*
- ii) U/S 357(3) Cr.P.C., the convict shall pay compensation of Rs.3,00,000/- (Rupees three lacs only) to the complainant who can recover entire amount either from accused or from his personal properties under law.”*

Briefly stated, the facts of the case are that the complainant-respondent Shiv Kumar had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act”) against the petitioner-accused with the averments that the complainant-respondent was having friendly relations with the petitioner-accused. The petitioner took a loan of Rs.3,00,000/- from him in different instalments during the year 2009-10 with an assurance that he shall return the same within a very short period.

In discharge of his liability, the petitioner issued cheque bearing No.041548 dated 26.11.2010 for a sum of Rs.3,00,000/- in favour of the complainant-respondent drawn at Vijay Bank, Branch 10, G.N.D.U., G.T. Road, Amritsar. However, when the said cheque was presented for encashment by the complainant through his banker, it was received back uncashed due to insufficiency of funds in the account of the petitioner vide memo. dated 26.11.2010. Therefore, the complainant served Legal Notice dated 2.12.2010 upon the petitioner, calling upon him to make the payment. However, when the payment was not made, the complainant-respondent filed a complaint under Section 138 of the Act.

The trial Court after recording preliminary evidence, summoned the petitioner vide order dated 22.2.2010. However, the petitioner did not appear despite issuance of various processes including proclamation. Ultimately, he was declared as proclaimed offender vide order dated 18.10.2011. Later on, the petitioner put in appearance and was admitted to bail. During the course of trial, statement of the complainant was recorded as CW-1 who in his evidence, tendered his duly sworn in affidavit Ex.CW-1/A in support of his complaint, proving the documents i.e. original memo.Ex.C2, copy of legal notice Ex.C3 and original postal receipts Ex.C4 and C-5.

The statement of the petitioner-accused was also recorded under Section 313 CrPC, in which, he denied the

allegations and stated that he was innocent and has falsely been involved in the case. He asserted that he never took any loan from the complainant-respondent. Even the friendly relations were also disputed. He went to the extent that he never met the complainant before filing of the present complaint and the cheque in question has been misused by the complainant in connivance with Ashok Kumar Manchana and Gulshan Kumar, partners of Machanda Industries, Khoo Bhalle Wala, Amritsar, with whom he had business dealings and due to business transactions, a dispute had arisen between them. His signatures on the cheque were forged, for which, he had filed a complaint to Commissioner of Police on 7.12.2010. Learned trial Court after hearing the parties, convicted the accused and sentenced him, as mentioned above.

Aggrieved against the aforesaid judgment of conviction and sentence, the petitioner preferred an appeal before learned Sessions Judge, Amritsar which was dismissed vide judgment dated 30.3.2015.

It is in these circumstances, the petitioner has filed the present revision petition challenging the judgments passed by both the Courts below.

On 13.7.2015, this Court while issuing notice of motion for 15.9.2015 had passed the following order:-

“Learned counsel for the petitioner contends that the petitioner is in custody since 30.3.2015. Further

submits that in case the petitioner is granted interim bail to enable him to arrange the compensation amount, he will arrange for the money.

Notice of motion for 15.9.2015.

Notice re: condonation of delay as well.”

On 15.9.2015, following order was passed by this
Court:-

“As per office report, notice issued to the respondent has been received back unserved with the report that the address is incomplete.

Learned counsel for the petitioner undertakes to serve the respondent afresh on his latest address.

List on 28.9.2015.

Process Dasti.

Petitioner shall serve the respondent through the counsel before the trial Court as well.”

On 28.9.2015, counsel for the respondent put in appearance and on 12.10.2015, keeping in view the possibility of settlement between the parties, petitioner was released on bail by passing the following order:-

“As has been agreed between the learned counsel, the petitioner is ordered to be released on interim bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Amritsar for one month to enable him to pay the cheque amount to the complainant.

Adjourned to 17.11.2015”

On 17.11.2015, this Court was informed that the petitioner shall pay an amount of Rs.1,00,000/- to the respondent-complainant within ten days and the remaining amount shall be paid before the adjourned date i.e. 10.12.2015. Order dated 17.11.2015 reads as under:-

Learned counsel for the petitioner states that though the petitioner has been released on bail but due to fever on account of dengue, he needs some more time to enable him to pay the cheque amount to the complainant.

On his request, adjourned to 10.12.2015.

Meanwhile, the petitioner shall comply the order dated 12.10.2015.

Learned counsel for the petitioner on instructions from Satinder Pal Singh, son of the petitioner, submits that the petitioner will pay an amount of Rs.1,00,000/- within ten days and remaining amount before the adjourned date.

Interim order to continue.”

On 10.12.2015, counsel for the petitioner sought more time to comply with the order dated 17.11.2015 and this Court while extending the effect of interim order, adjourned the case to 19.1.2016. On 19.1.2016 again, counsel for the petitioner sought more time to comply with the order dated 17.11.2015 and therefore, following order was passed:-

“Learned counsel for the petitioner prays for more time, to comply with the order 17.11.2015.

Adjourned to 29.1.2016.

However, it made clear that in case the order dated 17.11.2015 is not complied on or before the adjourned date, bail granted to the petitioner shall be liable to be cancelled.”

However, on 29.1.2016 again, another adjournment was sought, on the ground that the arguing counsel for the petitioner has gone out of station and in these circumstances, the case has been listed for today i.e. 2.2.2016.

Today again, when the case has been taken up for hearing, learned counsel for the petitioner submitted that he is unable to say whether the petitioner has complied with the order dated 17.11.2015 or that there is possibility of any settlement between the parties and he prayed for another adjournment. However, when this Court declined his prayer for further adjournment, he has argued the case on merits and submitted that the cheque in question was misused by the complainant in connivance with Ashok Kumar Manchanda and Gulshan Kumar, with whom the petitioner had business dealings and his signatures of the cheque were forged.

I have heard learned counsel for the parties and perused the impugned judgments.

It will be relevant to reproduce Sections 118 and 139 of the Act, which read as under:-

“118. Presumptions as to negotiable instruments. —

Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

xx xx xx xx xx

139. Presumption in favour of holder.— It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

Thus, as per Section 118 of the Act, until the contrary is proved, it shall be presumed that every negotiable instrument

was made or drawn for consideration and that every such instruments, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration. As per Section 139 of the Act, there is a presumption in favour of the holder that he has received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability unless contrary is proved.

The petitioner has failed to controvert presumption, though it is stated that he had made a complaint to Commissioner of Police on 7.12.2010, but in absence of any evidence with regard to that complaint, it is presumed that the cheque in question was issued by him in favour of the complainant. Before institution of the complaint, the complainant-respondent had served a legal notice dated 2.12.2010 Ex.C-3 upon the petitioner, calling upon him to make payment of the cheque amount within 15 days from the receipt of notice. Although the petitioner duly received the said notice, yet did not submit any reply to the same.

Moreover, there is concurrent findings of fact recorded by both the Courts below which is based on evidence led by the parties and thus, there is no scope for interference by this Court in revisionary jurisdiction re-appreciating the evidence. Reference may be made to judgment of Hon'ble the Apex Court in the case of **Johar and others Versus M/s Mangal Prasad and another 2008(3) SCC 423**, wherein Hon'ble Apex

Court while dealing with the scope of interference by High Court in the revisional jurisdiction, has observed as under:

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

Despite a limited scope to interfere, this Court considering the equitable prayer made on behalf of the petitioner has been adjourning the case from time to time and even interim bail was granted to him, but the petitioner has not come forward to honour the various orders passed by this Court. Therefore, lastly, on 19.1.2016, this Court while adjourning the case for 29.1.2016, had made it clear that in case the order dated 17.11.2015, reproduced above, is not complied with, bail granted to him is liable to be cancelled. But on 29.1.2016 and even till today, the petitioner has not complied with the order dated 17.11.2015. Therefore, this Court finds that the conduct of the petitioner has virtually left him disentitled for any further indulgence at the hands of this Court, as no visible efforts have been made by the petitioner to arrive at an amicable settlement with the complainant by paying the amount of compensation etc., as undertaken before this Court on behalf the petitioner at the

time of issuance of notice of motion on 13.7.2015 and again, on 17.11.2015. Rather the petitioner has misused the benefit of interim bail granted to him for one month, vide order dated 12.10.2015, which is still subsisting. Thus, taking into consideration the conduct of the petitioner, this Court has no hesitation to observe that the petitioner is not interested to make the payment to the respondent-complainant despite various opportunities afforded to him.

In view of the above, I find no reason to interfere with the impugned judgments passed by the Courts below.

The revision petition is dismissed.

Consequently, the interim order dated 12.10.2015, granting interim bail to the applicant-petitioner, which has been extended from time to time, shall stand withdrawn.

Accordingly, the petitioner is directed to surrender before the Chief Judicial Magistrate/Duty Magistrate, Amritsar on or before 1.3.2016, for undergoing his remaining sentence. In case the petitioner fails to surrender on or before 1.3.2016, Chief Judicial Magistrate/Duty Magistrate, Amritsar, shall take appropriate action to secure his presence and commit him to custody to undergo the remaining sentence.

February 02, 2016
AK

(HARI PAL VERMA)
JUDGE