

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 109

Criminal Revision No.1597 of 2016 (O & M)

Date of Decision: *April 28, 2016*

Trilok Grover

..... PETITIONER

VERSUS

Mrs. Hardeep Kaur

..... RESPONDENT

. . .

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. Deepender Singh, Advocate, for the petitioner.

. . .

Jaspal Singh, J

1. Challenge in this revision petition is to judgment dated February 6, 2016 passed by the Additional Sessions Judge, Faridabad whereby appeal filed by the petitioner was dismissed upholding the judgment of conviction dated October 10, 2014 and order of sentence dated October 16, 2014 passed by the Judicial Magistrate Ist Class, Gurgaon in Complaint

No.3011 dated September 11, 2012, captioned as 'Mrs. Hardeep Kaur vs. Trilok Grover', sentencing the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'Act') for a period of 3 months and to pay compensation to the tune of Rs. 3,50,000/- to the complainant and in default of payment of compensation, to undergo simple imprisonment for 3 months.

2. While assailing the impugned judgments/orders passed by both the courts below, it has been ebulliently argued by learned counsel for the petitioner that same are wrong, illegal, perverse and against the provisions of law. The complainant – respondent has miserably failed to establish the ingredients which constitute the offence under Section 138 of the Act. The Courts below have also erred in imposing the sentence of 3 months in default of payment of fine/compensation, especially when substantive sentence awarded by the courts is three months, which is otherwise a clear violation of Section 30 Cr.P.C. This provision clearly provides that where imprisonment has been awarded as a part of substantive sentence, the imprisonment in default of payment of fine shall not exceed $\frac{1}{4}^{\text{th}}$ of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of fine.

3. Moreover, from the evidence brought on record by the complainant – respondent, no offence under Section 138 of the Act is made out, especially in the circumstances that the legal notice stated to be served under Section 138 of the Act has not been legally proved on the file. Neither the concerned Advocate nor his Clerk or any associate has been examined to prove the notice. In the absence of the said evidence, notice cannot be taken into consideration at all and when there is no notice in the eyes of law, under Section 138 of the Act, the complaint is not legally maintainable. So, taking the case of complainant – respondent from any of the angles, the impugned judgments/order(s) are not sustainable in the eyes of law and are liable to be set aside being against the evidence as well as settled principles of law applicable to the facts and circumstances of the case in hand.

4. This Court has given an anxious thought to the aforesaid submissions of learned counsel for the petitioner and has scrutinized the impugned judgments/order.

5. As far as the contention put-forth by learned counsel for the petitioner challenging the conviction of petitioner is concerned, this Court does not find any legal force therein. Rather, it can be said that there is cogent, convincing

and authenticated evidence which clearly proves that cheque in question was issued by the petitioner in discharge of the legally enforceable debt, which on presentation, was dishonoured on account of “insufficient funds”, which in turn, necessitated the issuance of notice under Section 138 of the Act. There is nothing on the record to suggest that any reply was filed to the notice. The mere fact that neither Advocate nor his Clerk or any associate has been examined to prove the notice, does not *ipso facto* mean that the notice is unproved or that the complaint under Section 138 of the Act is not maintainable. Notice has been duly exhibited, that too, without any objection from the side of the petitioner, during the course of evidence before learned trial court. Thus, there is no scope of interference by this Court so far as conviction of petitioner under Section 138 of the Act.

6. Now taking up another contention put-forth by learned counsel for the petitioner that imprisonment in default of payment of fine/compensation could not have exceed 1/4th of the substantive sentence, this Court is of the considered view that this contention also does not carry any legal weight. An order of compensation can be passed by learned Magistrate while exercising powers under Section 357(3) Cr.P.C. and the

said compensation is recoverable in the same way as if it were a fine as provided under Section 421 Cr.P.C. Section 421 Cr.P.C further provides the mode of recovery of fine and it clearly depicts that a person can be imprisoned for payment of fine. Therefore, intention of the Legislature is clearly to ensure that mode of recovery of fine & compensation is on the same footing.

7. Adverting to the facts of the case in hand, petitioner has been sentenced to undergo RI for 3 months and to pay compensation to the tune of Rs. 3.5 lac and in default of payment of fine/compensation, to further undergo SI for a period of 3 months. No doubt, under Section 30 Cr.P.C., imprisonment in default of fine/compensation should not exceed $1/4^{\text{th}}$ of the substantive sentence but an identical question came up for hearing before Hon'ble Apex Court in case K.A. Abbas H.S.A. vs. Sabu Joseph & another, 2010(3) RCR (Criminal) 154. In the said case, accused was convicted and sentenced under Section 138 of the Act till rising of the court and to pay Rs. 5 lac as compensation and in case of default, to further suffer SI for 3 months. The sentence so imposed was upheld by Hon'ble Apex Court. In the case in hand, petitioner has been sentenced to undergo RI for 3 months and to pay compensation

to the tune of Rs. 3.5 lac and in default of compensation, to further suffer SI of 3 months. Thus, there is no legal flaw can be faulted in the impugned judgment/order.

8. In the light of what has been discussed above, this Court does not find any merit in the instant petition and the same is accordingly dismissed.

April 28, 2016
avin

(Jaspal Singh)
Judge