228 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.4602 of 2015 (O&M)
Date of Decision: April 12, 2016

Umesh Pandey .... Petitioner

vs.

Gurmeet Singh .... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ashok Aggarwal, Advocate for the petitioner.

Mr. Ravinder Singh Sampla, Advocate for the respondent.

1.Whether Reporters of Local Newspapers 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?

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the judgment dated 26.08.2015 passed by learned Addl. Sessions Judge, Chandigarh, affirming the judgment of conviction dated 18.03.2015 and order of sentence dated 20.03.2015 passed by learned Judicial Magistrate 1st Class, Chandigarh, vide which the present petitioner was convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo imprisonment for nine months and to pay ₹50,00,000/- as compensation under Section 357(3) Cr.P.C. to the complainant within a period of two months from the date of said order, in default thereof to undergo simple imprisonment for 15 days.

I have heard learned counsel for the parties and have also carefully gone through the case file.

As per allegations made in the complaint, the present petitioner is dealing in business of real estate under the name and style of "Sagar Real Estate" at Sector 38-C, Chandigarh. The petitioner had friendly relations with the complainant. In the year 2008, the petitioner approached the complainant for investment in the real estate and assured handsome profits. On his assurance, the complainant invested ₹35,00,000/-. The petitioner had also issued receipts regarding the aforesaid investments. In December, 2012, the complainant asked the petitioner to return his invested amount along with agreed profits. Consequently, the petitioner issued two post dated cheques bearing Nos.222502, dated 06.02.2013 and 222504, dated 27.02.2013 amounting to ₹25,00,000/- each. On presentation, the said cheques were dishonoured.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioner contends that the investment does not fall within the definition of debt or liability. It is further argued that investment is stated to have been made in the year 2008 and that it was the time barred debt. In this regard, reliance has been placed on the authority of this Court delivered in case of ***"Manjit Kaur vs Vanita", 2010(3) R.C.R. (Criminal) 574*** as well as the Delhi High Court delivered in case of ***"Prajan Kumar Jain vs Ravi Malhotra", 2010(3) CivCC 410.*** Reliance has also been placed on the authority of *Hon'ble the Apex Court delivered in case of **"Kamala S. vs Vidyadharan M.J. and another", 2007(3) R.C.R.(Criminal) 865.***

After considering the facts and circumstances of the case, I am of the view that investment to a real estate agent is a legally enforceable debt as well as liability.

It is agreed between the parties that the investment will earn profit. No time limit was fixed for the said purpose. Therefore, the limitation would start from the date when the complainant will demand his money back,. Thus, two cheques on the demand of the complainant to refund the investment along with profit in the year 2012, amounts to legally enforceable debt and liability. There is no question that said cheques were being issued against the time barred debt. Further, the petitioner does not claim that he has repaid the money. Therefore, the said authorities are not applicable to the present case.

Faced with this situation, learned counsel for the petitioner has prayed for showing some leniency in the sentence awarded to the petitioner.

In this case, the maximum sentence awarded to the petitioner is only nine months. The petitioner also does not claim that he has repaid the amount of the cheques. The sentence awarded to the petitioner in default of payment of compensation of ₹50,00,000/- is only 15 days simple imprisonment and presumably the petitioner will prefer to undergo simple imprisonment for 15 days instead of paying compensation.

In these circumstances, there is no ground to show any leniency.

Accordingly, the present revision petition stands dismissed.

(KULDIP SINGH)
JUDGE

April 12, 2016
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