

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

CRR No.517 of 2016 (O&M)
Date of Decision: May 26, 2016

Surender Kumar Bansal

...Petitioner

VERSUS

Dr.S.C.Gaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Zorawar Singh, Advocate
for the petitioner.

Mr.Vivek Goyal, Advocate
for respondent No.1.

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Surender Kumar Bansal against respondents Dr.S.C.Gaur and State of Haryana, challenging the impugned judgment of conviction and order of sentence dated 27.02.2015 passed by learned Judicial Magistrate Ist Class, Kurukshetra, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay compensation of ₹3,50,000/- i.e. the amount of cheque and in default of payment of compensation, to undergo rigorous imprisonment for a period of one month under Section 357(3) Cr.P.C. and also challenging the judgment dated 27.01.2016 passed by learned Addl. Sessions Judge, Kurukshetra, vide which appeal filed by petitioner was partly allowed and the petitioner was directed to pay a sum of ₹1,50,000/- as compensation.

At the time of preliminary hearing, learned counsel for the petitioner did not dispute the concurrent findings of the Courts below regarding conviction and only contended on the point of reduction of sentence.

Notice of motion was issued only qua quantum of sentence. Learned State counsel appeared and contested the petition.

From the record, I find that Dr.S.C.Gaur filed a complaint against Surender Kumar Bansal under Section 138/142 of the Negotiable Instruments Act. The brief facts of the case as noted down in the judgment passed by learned JMIC, Kurukshetra, are as under:-

“The present complaint has been filed by the complainant against the accused for the commission of offence punishable under Section 138/142 of the Negotiable Instruments Act, 1881 (hereinafter referred 'The Act') alleging that the accused had borrowed a sum of Rs.3,50,000/- from the complainant and in order to discharge of his liability, the accused issued a cheque bearing No.902572 dated 14.06.2013 to the tune of Rs.3,50,000/- drawn on ICICI Bank Ltd., Kurukshetra. The cheque was presented by the complainant but the same was returned dishonoured with the remarks “Funds Insufficient” vide memo dated 18.06.2013. Thereafter, the complainant issued a legal notice under registered post dated 15.07.2013 calling upon the accused to make the payment of the cheque but the accused did not pay the cheque amount. Hence the present complaint.”

Learned JMIC, Kurukshetra, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was partly allowed by learned Addl. Sessions Judge, Kurukshetra vide judgment dated 27.01.2016.

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

From the record, it is clear that accused-petitioner admitted the

allegations levelled in the complaint as he has not cross-examined the complainant. He also admitted the issuance of cheque. It is argued that in the present case, ₹2,40,000/- out of cheque amount ₹3,50,000/- i.e. the compensation awarded by learned JMIC, Kurukshetra has already been paid during the pendency of the appeal, which fact has also been mentioned in paragraph 20 of the judgment dated 27.01.2016 passed by learned Addl. Sessions Judge, Kurukshetra.

The perusal of the record shows that petitioner has been convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment of six months and to pay compensation of ₹3,50,000/- under Section 357(3) Cr.P.C. During the pendency of the appeal, substantial amount of ₹2,24,000/- has been paid.

In view of the above facts, I find that there was no dishonesty on the part of the conviction-petitioner. Rather, he did not cross-examine the complainant and admitted receiving of the loan and issuance of cheque in discharge thereof. At the time of arguments, learned counsel for the petitioner argued that even the petitioner has given the GPA to his wife to sell his house but she could not sell the property.

In view of all these facts, I take the lenient view and the sentenced imposed upon the petitioner is reduced and he is directed to undergo rigorous imprisonment for a period of 4½ months instead of six months. However, remaining amount of compensation will remain the same.

With the above-said modification in the sentence, the present revision petition stands dismissed.

May 26, 2016

Vgulati

VINEET GULATI
2016.05.31 15:01
I attest to the accuracy and
authenticity of this document
Chandigarh

**(INDERJIT SINGH)
JUDGE**