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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-401-2002
Date of Decision : April 07, 2017

Surender Kumar Jain ... Petitioner

Versus

Som Nath Singla and another Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Shiva Khurmi, Advocate,
[Amicus Curiae] for the petitioner.

None for respondent No.1.

Ms. Kirti Singh, DAG, Haryana,
for respondent No.2 -State.

SHEKHER DHAWAN, J.

Present revision is directed against the judgment of conviction dated 3.5.2000 and order of sentence dated 5.5.2000 passed by learned Judicial Magistrate Ist Class, Panchkula, whereby the petitioner was convicted and sentenced as under:-

Under Section	Sentence	In default
Section 138 of Negotiable Instruments Act [for short, “the Act”].	to undergo Rigorous Imprisonment for a period of Four months and to pay a fine of Rs.2,50,000/-.	To further undergo Simple Imprisonment for 30 days.

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2. The appeal filed by the petitioner was dismissed by learned Additional Sessions Judge, Panchkula, vide judgment dated 19.02.2002. Aggrieved of passing of judgment of conviction and order of sentence by both the Courts below, the petitioner is before this Court by way of present revision.

3. At the time of arguments, learned amicus curiae representing the petitioner submitted that the Courts below have not considered the fact that the two cheques were issued as security amount and the same were not for consideration. More so, the complainant failed to prove on record that he was having financial capacity to pay the amount to the revisionist and both the Courts below have failed to appreciate this fact.

4. Learned counsel for the revisionist also contended that the revisionist has been convicted and sentenced to undergo rigorous imprisonment for four months and to pay fine of Rs.2,50,000/- and in default of payment of fine, to further undergo simple imprisonment for 30 days, whereas the judgment of conviction was recorded on 3.5.2000 and on that day, the Judicial Magistrate was empowered to impose sentence of fine of Rs.5,000/- and as such, learned trial Magistrate was not competent to impose sentence of fine of Rs.2,50,000/- as the amount of cheques in question was Rs.1,50,000/- which was less than the fine amount. This legal aspect was also not considered by learned first Appellate Court while deciding the appeal on 19.2.2002 and as such the present revision petition be accepted and the impugned judgment of conviction and order of sentence

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be set-aside.

5. Learned counsel representing the State contended that the cheques were issued for consideration and both the Courts below have recorded findings based on the statement of complainant. There is no material or evidence to interfere in the said findings recorded by both the Courts below. As regards to the order of sentence, as per amended provisions of Section 138 of the Act, the Court can pass order of sentence in such like offence with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of cheque or both and as such, the revision is without any merit and the same be dismissed.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that most of the facts are not disputed that two cheques [Ex.C/1 and C/2] were issued for consideration and the total amount of cheques was Rs. 1,50,000/-. The cheques on presentation were dishonoured and the complainant was intimated vide memo Ex. C-2/1. Thereafter the complainant issued legal notice, which was sent through registered post receipts, Ex. C-4 and C-5 and UPC receipt Ex. C-6. Despite that, payment was not made. Complainant – Som Nath [CW-1] was subjected to cross-examination and nothing substantial has come to disbelieve the testimony of the complainant. His version is corroborated by statements of CW-2, Randhir Singh, Branch Manager, HARCO Bank. The testimony of CW-3 is also on the same line. Against this, the defence is just a plea of denial apart from statement of DW-

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1, Parmod Kumar. Both the Courts below have minutely analysed the oral as well as documentary evidence available on the file and returned the findings that the cheques were issued for consideration and the same remained uncashed despite demand and issuance of legal notice. As such, the revisionist has committed the offence punishable under Section 138 of the Act and the present revision petition is without any merit and stands dismissed qua judgment of conviction.

7. As regards to order of sentence, the order was passed on 3.5.2000 and the Court of Judicial Magistrate ordered the revisionist to rigorous imprisonment for four months and to pay fine of Rs.2,50,000/- and in default of payment of fine, to further undergo simple imprisonment for 30 days. In view of the plea having been raised by learned counsel representing the revisionist and the provisions of law as envisaged under Section 138 of the Act and while exercising the power under Section 401 Cr.P.C., the order of sentence dated 5.5.2000 is modified to the extent that the revisionist shall undergo Rigorous Imprisonment for four months and shall make payment of Rs.2,50,000/- as compensation [Rs.1,50,000/-, towards amount of two cheques and a sum of Rs.1,00,000/- on account of interest thereon] which shall be payable to the complainant/respondent No.1. Under Section 357 (4) Cr.P.C., an order of compensation can be passed by the appellate Court; the High Court or by the Court of Sessions in revision. The power of the Court to award compensation is not ancillary to other sentences but is in addition thereto. This power under this Section has a message i.e., a

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measure of responding properly to the crime as also reconciling the victim with the offender.

9. The revisionist was released on bail by this Court during the pendency of present revision petition vide order dated 19.3.2002. His bail/surety bonds are cancelled. He be arrested and sent to jail to undergo the remaining part of sentence. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

10. Present revision stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

April 07, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes