In the High Court for the States of Punjab and Haryana at Chandigarh

CRR No.1140 of 2008 (O&M)
Date of Decision:- December 15, 2017

Suraj Bhan .....Petitioner

Versus

State of Haryana and another ......Respondents

CORAM: **HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. Rajiv Vij, Advocate, Amicus Curiae,
for the petitioner.

Mr. Vijesh Sharma, Deputy Advocate General, Haryana,
for respondent No.1.

None for the complainant-respondent No.2.

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Gurvinder Singh Gill J.

1. Suraj Bhan has filed this revision petition assailing judgment dated 10.6.2008 passed by learned Additional Sessions Judge, Hisar whereby appeal filed by petitioner against judgment dated 18.9.2006 of JMIC, Hisar, challenging his conviction for offence punishable under Section 138 of Negotiable Instruments Act 1881 (hereinafter referred to as 'The Act') has been dismissed.

2. The facts, in nutshell, are that complainant M/s Godwin Finance and Leasing

Private Limited filed a complaint against petitioner alleging therein that the petitioner had stood guarantee for Raj Singh who had been advanced a loan of an amount of ₹ 80,000/- for purchase of vehicle Swaraj Mazda in September, 1999. The loanee Raj Singh entered into a Hire-Purchase agreement with complainant-company wherein it was agreed that the loanee would pay an amount of ₹ 5276/- per month to complainant company for 21 months. It was further agreed that in case loanee Raj Singh defaults, then the guarantor Suraj Bhan would be liable to repay the loan amount along with interest and other incidental charges. The complainant alleged that since the loanee defaulted in making payment of installments, therefore the petitioner Suraj Bhan, in discharge of his liability issued cheque no.764978 dated 30.11.2001 for an amount of ₹ 90,000/- in favour of complainant-company. However, when the said cheque was presented by the complainant to the drawee bank for encashment, the same was dishonoured due to 'insufficient' funds. The complainant thereafter sent a notice to the petitioner on 15.12.2001 demanding payment qua dishonoured cheque but the petitioner failed to make payment within 15 days of receipt of said notice and consequentially the complainant filed complaint under Section 138 of Negotiable Instruments Act, 1881.

3. Pursuant to summoning of the petitioner as an accused, a notice of accusation for commission of offence punishable under Section 138 of the Act was served upon him to which he pleaded not guilty and claimed trial. The complainant examined PW-1 Hira Singh, Director of complainant-company and PW-2 Ved Makkar, Accountant of complainant-company. The accused in his statement recorded under Section 313 Cr.PC. pleaded false implication. However, the accused did not lead any evidence in his defence.

4. The learned Trial Court, upon appraisal of evidence on record, held the accused guilty for committing offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for six months and to pay fine of ₹ 2,000/- vide judgment dated 18.09.2006. In default of payment of fine, it was ordered that the convict would further undergo simple imprisonment for one month. The appeal filed by the accused challenging aforesaid judgment dated 18.9.2006 was dismissed by learned Additional Sessions Judge, Hisar vide judgment dated 10.6.2008. Aggrieved with the same, the accused/petitioner has filed the present revision petition.

5. The learned counsel for the petitioner while assailing the impugned judgment submitted that the petitioner was merely a guarantor and as such, it cannot be said that he had any legal liability to discharge in terms of Section 138 of the Act so as to be held liable for committing any offence. The learned counsel has further submitted that in fact the complainant company had misused a blank cheque which had been issued by the petitioner earlier to sister concern of the complainant i.e. M/s Hisar Baba Cooperative Non-Agriculture Thrift and Credit Society Limited from which the petitioner had taken a loan of ₹ 70,000/-. The learned counsel for the petitioner submitted that though the petitioner had repaid the amount received from the society but since the Society did not give clearance certificate, the petitioner was constrained to file Civil Suit seeking clearance certificate from the society which was decreed but subsequently, the said society in order to take revenge gave the cheque in question to the complainant, who had misused the same. The learned counsel for the petitioner, thus, prayed for setting aside the impugned judgment and for

acquittal of the petitioner.

6. I have considered aforesaid submissions. As regards the contention that dishonouring of a cheque issued by a surety would not attract any criminal liability of the surety, the learned counsel has pressed into service a judgment of Bombay High Court reported as *2011 (6) RCR (Criminal) 426-Kartik vs. HDFC Bank Limited*. Upon perusal of the cited judgment, I find that the facts were distinct inasmuch as the complainant at the time of advancing loan of ₹ 1.5 lacs to a company had taken a corporate guarantee from another firm. Three separate deeds of guarantee had also been executed by the accused as well as by his father and his wife. Since the company was unable to repay the loan, therefore, the father of accused, as a 'comfort' to the complainant gave a cheque for an amount of ₹ 1,40,000/- as a security/additional comfort along with a covering letter wherein it was specifically stated that the same was being issued to provide an additional level of comfort as had been suggested by the complainant. Subsequently, without issuing any notice to the accused, the complainant presented the cheque, which was dishonoured.

7. Law in this regard has been well settled by Hon'ble the Supreme Court in *(2016) 3 SCC 1-Don Ayengia vs. State of Assam and another,* wherein it has been held that dishonour of cheque issued as security for discharge of a debt or other liability of principal debtor who had defaulted, would render the guarantor liable for offence u/s 138 of Negotiable Instruments Act.

8. In view of the position of law settled by Hon'ble the Supreme Court in *Don Ayengia's* case(supra), the contention put forth on behalf of the petitioner that

dishonour of a cheque issued by a surety would not attract liability under Section 138 of the Negotiable Instruments Act, 1881, can not be accepted.

9. As far as the other contention of the appellant that the present case is actually a case of misuse of a cheque previously issued by him to a sister concern of the complainant-company regarding which he had also filed a civil suit, the said contention is not substantiated from any evidence as the complainant has not brought on record any document pertaining to said civil suit or any document to prove the factum of any previous loan allegedly taken by him from sister concern of complainant. The aforesaid contention, thus, is also devoid of merits and is rejected.

10. No other point has been raised or urged before this Court. The evidence led by the complainant fully establishes that the cheque issued by petitioner as surety was dishonoured when the same was presented by complainant as the principal borrower had defaulted. Despite notice issued to the petitioner, the amount in question was not paid by petitioner. There is no misreading of evidence by the Trial Court or the Appellate Court. No infirmity could be pointed out in the findings of conviction as affirmed in impugned judgement and consequently the same are upheld.

11. As regards sentence, as per the custody certificate dated 2.11.2017, the petitioner has already undergone 4 months and 25 days of imprisonment out of the 6 months of sentence of imprisonment imposed on him. The petitioner has been facing incarceration of trial for last 15 years. As per the custody certificate, he is not even stated to be a previous convict. He is presently

aged about 67 years . In view of said facts, in my opinion, a case is made out for reduction of sentence. The substantive sentence of imprisonment is accordingly reduced from six months to the one already undergone.

12. The revision stands dismissed with the aforesaid modification in sentence.

(GURVINDER SINGH GILL)
JUDGE

December 15, 2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No