

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

**Criminal Revision 566 of 2008
Date of Decision: February 3, 2017**

Babu SinghPetitioner
Versus
Fraternal Investments (P) Ltd. and another Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Ms. Savita Rana, Advocate for
Mr. Rishi Pal Rana, Advocate
for the petitioner.

None for respondent No.1.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana
for respondent No.2-State.

T.P.S.MANN, J. (Oral)

The petitioner was tried on a private complaint instituted by respondent No.1/complainant under Section 138 of the Negotiable Instruments Act with the allegations that the cheque issued by him in favour of the complainant in the sum of Rs.46,900/- in discharge of his liability, was returned unpaid on account of insufficiency of funds. Vide judgment and order 1/2.8.2007, learned Judicial Magistrate 1st Class, Ambala Cantt., convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for one

year and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. Besides, he was also directed to pay an amount of Rs.55,000/- to the complainant by way of compensation.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. Vide judgment dated 10.1.2008, learned Additional Sessions Judge, Fast Track Court, Ambala, while holding that the appeal was devoid of any merit, dismissed the same. Still not satisfied, he preferred the present revision, which was admitted on 12.5.2008. Simultaneously, his sentence of imprisonment was suspended and he was ordered to be released on bail.

Learned counsel for the petitioner has submitted that there was no liability upon the petitioner towards the complainant and, therefore, there was no necessity for him to have issued the cheque in question. However, in the grounds of appeal filed by the petitioner, he admitted that he had issued the cheque but without his signatures. Once, he had issued the cheque and handed over the same to the complainant, he cannot claim that he was not under any obligation to discharge the liability by issuing the cheque.

Learned counsel for the petitioner has also submitted that the registered legal notice Ex. C5 said to have been issued

by the complainant was never served upon him. In this regard, she has referred to the impugned judgment passed by the lower appellate Court, wherein, it stood mentioned that the postal authorities had remarked that it could not be served upon the petitioner despite repeated visits to his house. However, once the registered legal notice Ex.C5 had been sent to the petitioner at his given address, the Court can easily draw the presumption that it was the petitioner, who had been running away and avoiding being served with the registered legal notice.

It is also submitted by learned counsel for the petitioner that Sh. S. C. Aggarwal, who had filed the complaint on behalf of the complainant was not authorized by the complainant in that respect. However, it is clear from the records that alongwith the complaint, Sh. S. C. Aggarwal, had placed on record the general power of attorney executed by the complainant in his behalf.

The learned Courts below have appreciated the evidence led by the parties in its proper perspective. No case is made out for any interference in the conclusion arrived at by the learned Courts below that the petitioner had issued the cheque in question in order to discharge pre-existing liability and the cheque was dishonored by the bank on account of insufficiency of funds. Under these circumstances, no case is made out for any

interference in the conviction of the petitioner for the offence under Section 138 of the Negotiable Instruments Act.

As regards the question of sentence, it may be noticed that the petitioner is facing the agony of criminal prosecution for the last about seventeen years. As per the custody certificate already brought on record by the learned State counsel, the petitioner has undergone total sentence of four months and fourteen days out of the sentence of one year imposed upon him. He is not shown to be either involved or convicted in any other case. He is on bail for the last about nine years.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the petitioner behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice will be suitably met, if the substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the sentence of fine alongwith its default clause can be maintained. As regards the amount of Rs.55,000/- directed to be paid by him by way of compensation to the complainant, it would be appropriate to reduce the said amount to Rs.35,000/-, which

was initially borrowed by the petitioner.

Resultantly, the conviction of the petitioner under Section 138 of the Negotiable Instruments Act is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine alongwith its default clause is maintained. The amount of Rs.55,000/- imposed upon him to be paid to the complainant by way of compensation is, however, reduced to Rs.35,000/-

The revision is, accordingly, disposed of.

February 3 , 2017
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No