IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR 1165-2012 (O&M)
Date of decision: 19.12.2017

Dharam Pal

…..Petitioner

versus

State of Punjab and another

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.K.B.Raheja, Advocate for the petitioner
Ms.Monika Jalota, DAG Punjab

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.

Custody certificate dated 14.12.2017 filed in Court today and the same is taken on record.

Dharam Pal petitioner accused has filed this revision petition against the judgment dated 31.3.2012, passed by learned Additional Sessions Judge, Ferozepur, affirming the judgment of conviction and order of sentence dated 18.9.2008, passed by learned Additional Chief Judicial Magistrate, Ferozepur, vide which the petitioner was convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.5000/- and in default thereof, to further undergo Rigorous Imprisonment for one month.

Initially, a criminal complaint was filed by the Punjab State Civil Supplies Corporation Limited (for short, 'PUNSUP') against M/s Shiv

Shakti Rice Mills, Mandi Guruharsahai and its three partners, namely, Dharam Pal, Prem Nath and Amrik Singh. Amrik Singh died during trial and complaint against him stood abated. Prem Nath was acquitted by the trial Court on the ground that he had retired before the date of issuance of cheque. However, Dharam Pal one of the signatory of the cheque along with Amrik Singh (now deceased), was convicted and sentenced.

Short facts of the case are that PUNSUP purchases paddy from the market for supply of rice for central pool of Government of India and get it shelled from the various rice mills and then the rice mills supply the rice to Food Corporation of India on behalf of PUNSUP. In the year 1996-97, PUNSUP through its District Manager entered into an agreement with M/s Shiv Shakti Rice Mills, for shelling of the paddy for PUNSUP, which was to be supplied to Food Corporation of India on behalf of PUNSUP. The agreement dated 18.10.1996 was signed by Dharam Pal petitioner as partner of the firm. PUNSUP then supplied 160 bags, weighing 104 quintals of IR-8 variety of paddy and 48612 bags, weighing 31597.80 quintals of fine quality paddy upto the December 1996 for supply of rice upto 28.2.1997. Thereafter, 10265 bags, weighing 672-25 quintals of fine quality paddy were supplied and the rice was to be delivered upto 31.5.1997. Accused firm was required to deliver 70.72 quintals of IR-8 rice and 26023-63-400 quintals of fine quality of rice to Food Corporation of India in the account of PUNSUP. Accused firm supplied 24250 bags, weighing 22934-50-000 quintals of fine quality rice only. The balance 70.72 quintals of IR-8 rice and 3089-13-400 quintals of fine quality of rice has not been delivered to Food Corporation of India. Therefore, PUNSUP is entitled to 1 ½ times of economic cost of price. The value of 1 ½ time of economic cost of paddy for undelivered rice comes to Rs.34,82,172.03. In order to discharge the said liability, the accused firm issued a cheque bearing no.0398939 dated 30.6.1997 for Rs.23,80,462/- drawn at State Bank of India Guruharsahai as part payment. The cheque when presented to the bank was dishonoured for want of sufficient funds. On the request of the accused firm, cheque was again presented to the bank but was again returned on 29.7.1997 for want of sufficient funds. Thereafter, the complainant issued a legal notice and filed the complaint.

I have heard learned counsel for both the parties and have also carefully perused the record.

Learned counsel for the petitioner at the very outset argued that in this case complaint was decided in the absence of the appellant/petitioner. It is recorded that Shri M.L. Chugh and Manoj Bajaj, Advocates appeared for the appellant. However, it is contended that in fact, said two advocates, who were earlier authorized, were superseded by another advocate O.P.Dhull and neither O.P.Dhull nor appellant had appeared on the said date and the case was decided in their absence. The comments of the learned Additional Sessions Judge, Ferozepur were called for and the original file has also been examined. In fact, it is no where mentioned that the power of attorney of M.L. Chugh and Manoj Bajaj Advocates have been withdrawn. Petitioner, first engaged Shri M.L. Chugh and then Manoj Bajaj then engag ed another counsel O.P.Dhull. It is for the accused to engage as many as counsel he likes. Accused was supposed to appear on the date fixed. He himself did not appear, rather his counsel appeared and argued the matter. Therefore, the contention that the case was decided in the absence of the counsel is without any force.

Learned counsel for the petitioner has vehemently argued that there is no legally enforceable debt. It is contended that all the three partners were competent to sign the cheque. Therefore, the signing of cheque by two of the partners is illegal. Reliance has been placed on the statement of Surinder Singh, Record Keeper of State Bank of India, Guruharsahi (PW2).

It is to be noted that there were three partners. In addition to Dharam Pal and Amrik Singh, one Prem Nath was also a partner. It has also come in evidence that the firm stood dissolved on 31.3.1997 and the third partner Prem Nath retired from the said firm. The present cheque was issued on 30.6.1997 i.e. after his retirement. At that time, there were only two partners, namely, Dharam Pal and Amrik Singh and both of them signed the cheque. Prem Nath partner has been acquitted only on the ground that he stood retired from the firm before the issuance of the cheque. Therefore, both the partners of the firm have signed the cheque. Out of the two, Amrik Singh expired during pendency of the trial. Therefore, only Dharam Pal has been convicted.

Learned counsel for the petitioner has vehemently argued that in this case, there is no legally enforceable debt. Liability of the petitioner has not been fixed till 30.6.1997 by way of arbitration or any other proceedings. Therefore, the petitioner cannot be convicted under Section 138 of Negotiable Instruments Act, 1881.

I am of the view that various receipts are on file, which shows that as to how much quantity of rice was delivered to the accused firm through its partner. Accused Dharam Pal has signed the receipts. Therefore, quantity of paddy supplied to him is mentioned in the said receipts. Rice to be supplied by him is also mentioned in the agreement.

There was short supply of rice. It is not the claim of the accused in his statement recorded under Section 313 Cr.P.C. that the entire rice has been supplied in terms of the agreement to Food Corporation of India on behalf of PUNSUP. The plea of the accused Dharam Pal in the statement recorded under Section 313 Cr.P.C. is that the cheque was taken as a security and has been encashed. Therefore, indirectly, Dharam Pal does not claim that entire rice has been supplied in terms of the agreement. It is not the law that the complainant must first avail the other remedy to get the liability determined and only thereafter, can file complaint under Section 138 of Negotiable Instruments Act, 1881. The shortage of supply of rice was there, for which, the cheque was issued. The cheque was dishonoured for want of sufficient funds. Therefore, the liability under Section 138 of Negotiable Instruments Act, 1881 is made out. It is to be noted that various documents executed between the parties are on file. The genuineness of the agreement between the parties has not been denied by the accused petitioner. Even though there is arbitration clause in the agreement dated 18.10.1996, however, in case of dishonour of cheque, remedy under Section 138 of Negotiable Instruments Act, 1881 is not barred.

Learned counsel for the petitioner has produced the authorities in *<u>M/s Mithi Interiors Pvt. Ltd. and others vs. M/s Esscon Engineers Pvt. Ltd. and others</u>, 2011(4) RCR (Criminal) 204, <u>Ramrajsingh vs. State of M.P. And another</u>, 2009(2) RCR (Criminal) 773, <u>Smt.Katta Sujatha vs. Fertilizers and Chem. Travancore Ltd. and another</u>, 2002(4) RCR (Criminal) 502, <u>M.S.Narayana Menon @ Mani vs. State of Kerala and another</u>, 2006(3) RCR (Criminal) 504 and <u>Nitinbhai Saevatilal Shah and another vs. Manubhai Manjibhai Panchal and another</u>, 2011(4) RCR*

(Criminal) 148. However, in this case, it has been proved that at the time of signing of the cheque, there were only two partners and both of them have signed the cheque. One of the partner expired during trial. Therefore, second partner who was also a signatory to the cheque has been convicted and sentenced.

It being so, I am of the view that there is no illegality or infirmity in the judgments passed by the two Courts below. Since the huge amount of about Rs.23 lakhs has not been paid, therefore, there is no ground to reduce the sentence as well.

Resultantly, the present revision petition stands dismissed.

Petitioner be re-arrested to undergo the remaining part of sentence.

19.12.2017 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: No