IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.1916 of 2015 (O&M)
Date of Decision: May 16, 2017

Lal Singh

...Petitioner

VERSUS

Mahinder and Mahindra Financial Services Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Chand Ram Olla Advocate for the petitioner.

Mr.Nitin Thatai, Advocate for the respondent.

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INDERJIT SINGH, J.

The present revision has been filed by the petitioner Lal Singh against respondent Mahindra and Mahindra Financial Services Ltd., challenging the impugned judgment of conviction dated 14.03.2012 and order of sentence dated 16.03.2012 passed by learned Judicial Magistrate Ist Class, Hisar, vide which the petitioner was convicted and sentenced to undergo simple imprisonment for a period of two years and to pay fine i.e. double of the cheque amount i.e. ₹1,88,000/- to the complainant-Society as compensation and also challenging the judgment dated 25.10.2013 passed by learned Addl. Sessions Judge, Hisar, vide which appeal filed by petitioner was dismissed.

From the record, I find that a complaint was filed against petitioner by Mahindra and Mahindra Financial Services Limited under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Hisar, are as under:-

> *"2. The complainant-Company claimed itself to be a Registered Company under the Indian Companies Act, having its Registered Office at Bombay and one of its Branch Office at Hisar. It further claimed to be represented by Sh.Jagdish Kathuria, Branch Incharge and General Power of Attorney, who was allegedly duly competent to file and pursue the complaint in hand. It was submitted, that as the Complainant-Company dealt in the business of finance including hire and purchase, the accused issued a cheque bearing No.246031 dated 11.12.2007, for Rs.94,000/- drawn on Oriental Bank of Commerce, Narwana in his account No.22425 to discharge his outstanding liability, as per agreement enforceable by law. However, on its presentation in HDFC Bank Limited, Hisar, the same was returned by the Banker of the accused, unpaid with the remarks "Insufficient Funds" vide Bank Memo, dated 20.2.2008. Resultantly, a legal Notice under Section 138 of the Act was served upon the accused through registered post on 10.3.2008, directing him to make the payment of the cheque amount within 15 days from its receipt, but of no avail. Hence, the present complaint."*

Learned JMIC, Hisar after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Hisar, vide judgment dated 25.10.2013.

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

On 07.07.2015, learned counsel for the petitioner stated that petitioner is ready to deposit cheque amount as well as bank interest thereon and notice of motion was issued for 04.08.2015 by this Court. On the next date, learned counsel for the respondent asked for time to apprise the Court regarding the details of the instalments paid and outstanding amount. As per order dated 02.09.2015, learned counsel for the petitioner stated that his client is a poor farmer and would pay the fine once he comes out of the prison and to show his bonafide he tendered a cross cheque for a sum of ₹95,000/- which was handed over to the counsel for the respondent-company and he prayed for short adjournment to realize the amount stated in the cheque. As per order dated 10.09.2015, learned counsel for the petitioner stated that once the petitioner is extended the benefit of suspension of sentence and granted bail, he would pay the remaining amount and it was ordered by this Court that remaining sentence of the petitioner is temporarily suspended and he was ordered to be released on interim bail. Petitioner was directed to be present in Court on the next date of hearing to apprise the Court regarding the payment of the remaining amount. On 19.11.2015, petitioner who was present in the Court, submitted his undertaking whereby he undertook to pay the outstanding amount of ₹93,000/- in six monthly installments towards the remaining amount of fine. Said undertaking was taken on record as Mark-A.

As per order dated 15.03.2016, it was ordered that since the petitioner has failed to honour his own undertaking, therefore, he is not entitled to enjoy the benefit of suspension of sentence and hence, the bail granted to him deserves to be cancelled. However, in the interest of justice, one more opportunity was granted to the petitioner to deposit the outstanding amount within 15 days but as the petitioner failed to repay the amount, therefore, the order temporarily suspending the sentence of the petitioner was recalled. Since then, neither the petitioner surrendered before the Court nor paid the remaining amount.

The record of the Courts below was also summoned in this case. I have gone through the record of this case as well as record of the Courts below.

The complainant examined CW-1 Shri Vishnu Kumar, Assistant Legal Manager and General Power of Attorney of the complainant-Society, who tendered documents and evidence was closed. In the statement under Section 313 Cr.P.C., accused denied the correctness of the evidence and stated that he had neither borrowed any loan from the Complainant-Company nor executed any document. However, delivery of a blank signed cheque and a few blank signed documents had been admitted which were allegedly prepared, thereafter without his consent and knowledge.

Learned Magistrate, after appreciating the evidence and in view of the presumption, which was not rebutted by the accused by raising probable defence, convicted and sentenced the accused-petitioner as stated above. The complainant proved the copy of statement of account Ex.C2, original cheque Ex.C3 and copy of loan agreement Ex.C8.

From the record, I find that the findings given by learned Courts below are correct, as per evidence and law. At the time of arguments, nothing has been pointed out as to how the findings given by the Courts below are perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below. The findings have been given correctly by appreciating the evidence in right perspective.

It is held by the Courts below that it stands duly established that accused obtained a loan of ₹2,50,000/- from the complainant for the purchase of a tractor after executing the loan agreement and in order to discharge his outstanding liability, accused issued cheque for ₹94,000/- in favour of the complainant, which was dishonoured on account of insufficient funds in the account of the accused.

From the record, I find that notice of motion was only issued as learned counsel for the petitioner has made statement that petitioner is ready to pay the cheque amount along with bank interest but the amount has not been paid as discussed above. Otherwise also, nothing has been pointed out as to how the judgments passed by both the Courts below are perverse or illegal.

Therefore, finding no merit in the present petition, the same is dismissed.

Learned CJM concerned is directed to get arrested revision petitioner by issuing warrants for sending him to custody to undergo remaining sentence as per law. Learned CJM concerned is further directed to send the report within three months regarding execution of warrants.

May 16, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**