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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2648-2016 (O&M)
Date of Decision: 09.11.2017

ASHOK KUMAR ***...Petitioner***

VS.

PARAMJIT SINGH ***...Respondent***

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Harsh Neyol, Advocate,
for the petitioner.

Mr. Ajay Pal Singh, Advocate,
for the respondent.

Ms. Monika Jalota, DAG, Punjab.

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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. (ORAL)

Impugned in the present revision is judgment dated 27.04.2016 passed by the learned Additional Sessions Judge, Fazilka affirming the judgment of conviction and order of sentence dated 22.07.2015 passed by the learned Chief Judicial Magistrate, Fazilka vide which the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹ 5,000/- and in default thereof to further undergo simple imprisonment for two months. The complainant-respondent was also awarded compensation to the tune of ₹ 2.50 Lakhs from the accused-petitioner under Section 357 of the Cr. P.C.

The records of the lower Courts have been called for and examined.

The allegations made in the complaint are that the accused-petitioner issued a cheque No. 701372 dated 26.08.2014 for ₹2.50 Lakhs to discharge the legally enforceable debt. The said cheque was dishonoured with the remarks “funds insufficient”.

Learned counsel for the petitioner has argued that the complainant is working as Money lender. Therefore, the present complaint is liable to be dismissed. It is further contended that the complainant had used the black money to advance loan and as per Section 269-SS of the Income Tax Act, 1961 and Section 3 of the Punjab Money Lending Act, 2007, not more than a sum of ₹ 20,000/- be advanced in cash.

I have gone through the cross-examination of the complainant-respondent, Paramjit Singh. In the said cross-examination, no suggestion had been put to the complainant that the loan was not advanced to the petitioner. Rather the cross examination reveals that the accused petitioner used to take money from the complainant and return the same. This was going on from the last 2-3 years. It was the practice that after taking the loan, accused-petitioner used to issue cheque and after return of loan, the said cheque was returned. This has happened 3-4 times. It goes to show that the accused petitioner used to take loan from the complainant and hand over the cheque presumably authorizing the petitioner to fill in the same if loan is not returned. However, every time loan was repaid and the cheque had been returned. However, this time it is not claimed that the loan was returned. Therefore, the complainant was justified in filling the blank cheque and presented the same before the Bank.

So far as, provisions of Income Tax Act, 2007 are concerned, if these are violated, it is to be dealt under the Income Tax Act, 1961. However, the complaint under Section 138 of Negotiable Instruments Act, 1881 cannot be dismissed on this ground. The same is the fate of the Punjab Money lending Act, 2007. The Punjab Money Lending Act does not bar the complaint filed under Section 138 of the Negotiable Instruments Act which provides for punishment. Before the lower Court, the accused-petitioner has not led any defence evidence nor put up any version. It being so, there are concurrent findings of the two Courts below and there is nothing on the file to differ with the same.

Learned counsel for the petitioner has argued that in this case compensation has been awarded under Section 357 of Cr. P.C. He relied upon the authority of the apex Court delivered in the case of ***Sivasuriyan Vs. Thangavelu*** *(2004) 13 SCC 795* and pressed that such compensation cannot be awarded under Section 357 Cr. P.C. Section 138 of the Negotiable Instruments Act, 1881 itself provides for awarding compensation in addition to the punishment. Therefore, if wrong section is mentioned for awarding the compensation in the judgment of the lower court, the same can be corrected. The judgment of *Sivasuriyan (Supra)* shows that in the said case, no compensation was awarded by the lower Court and that without any cross appeal being filed, the appellate Court while reducing the sentence has awarded the compensation to the tune of ₹ 1.00 Lakh. It was held by the apex Court that such compensation cannot be granted by the appellate Court. The view taken by the apex Court is perfectly in accordance with law. Here the compensation was awarded by the lower Court but wrong section was mentioned which can be corrected in revision. As such the compensation awarded before the lower Court is deemed to be under Section 138 of the Negotiable Instruments Act, 1881.

In view of the above, no ground is made out to interfere with the concurrent findings of the both the Courts below. Accordingly, the present revision stands dismissed with above noted modification.

Since, accused petitioner has not paid even single penny to the complainant-respondent, therefore, no ground is made out for reduction in the sentence awarded to the petitioner. Accordingly, the petitioner who is on bail be re-arrested and committed to jail to undergo remaining part of the sentence.

November 9, 2017 **(KULDIP SINGH)**
Suresh Kumar **JUDGE**

Whether speaking / reasoned : Yes ✓ / No

Whether Reportable : Yes / No ✓