IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

429

Criminal Revision No.3247 of 2016 (O&M)
Date of Decision: May 5th, 2017

Om Parkash

...Petitioner

Versus

Ved Parkash since deceased through LR Smt. Veena Nagori

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ramesh Sharma, Advocate
for the petitioner.

Mr. Chanderhas Yadav, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

This revision is directed against the judgment dated 13.07.2016 passed by Additional Sessions Judge, Fazilka, upholding the judgment of conviction and order of sentence dated 12.06.2015 passed by Judicial Magistrate Ist Class, Abohar, whereby petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (for short 'N.I. Act') and sentenced to undergo simple imprisonment for two years and to pay a fine of ₹2,000/- with default stipulation to undergo simple imprisonment of one month, for dishonouring of a cheque for ₹1,40,000/- having been issued by the petitioner in favour of the respondent-complainant .

2. It is the contention of learned counsel for the petitioner that the claim of the respondent-complainant for an amount of ₹1,40,000/- is based upon the *bahi* entries and in the light of the judgments of this Court in *Balbir Singh Versus Raj Krishan 2015(2) RCR (Crimiinal) 812* and *Narsi Dass Versus Surender 2015(1) Civil Court Cases 489,* wherein it has

been held that *bahi* entries cannot be made the basis for projecting it to be a loan having been advanced, in discharge whereof the cheque is alleged to have been issued by the petitioner and dishonour of which could have been said to be an offence under Section 138 of the N.I. Act. His further contention is that blank cheque was taken by respondent-Ved Parkash from the petitioner, as he being a commission agent, had an upper hand on him. The amount has been inserted by the respondent despite there being no liability on the part of the petitioner. The said cheque, therefore, cannot be said to be a legal tender which would fulfill the requirement of the provisions of the statute resulting in the conviction and sentence, as has been imposed by the Courts below. He, therefore, prays for setting aside the orders passed by the trial Court as well as the Appellate Court and acquit the petitioner of the offence for which he has been convicted and sentence. In the alternative it is prayed that the sentence of the petitioner may be reduced keeping in view the fact that the amount which is stated to be the loan, is not heavy which would deserve a sentence of two years, as has been ordered by the trial Court and upheld by the Appellate Court.

3. On the other hand, counsel for the respondent-complainant has vehemently submitted that the petitioner had borrowed money from respondent-Ved Parkash on two occasions i.e. an amount of ₹55,000/- on 27.06.2011 and ₹1,00,000/- on 03.12.2011, out of which he had repaid only a sum of ₹14,985/-. In discharge of this liability, petitioner had drawn a cheque bearing No.626208 dated 02.05.2012 for a sum of ₹1,40,000/-. The said cheque was drawn on Canara Bank, Branch Abohar. When the said cheque was presented on 04.06.2012, the same was returned with the memo

remarking 'insufficient funds'. Statutory notice was served upon the petitioner on 08.06.2012 under registered cover and thereafter the amount having not been paid by the petitioner, a complaint was filed on 23.07.2012. He further submits that the *bahi* entry is only qua ₹55,000/- dated 27.06.2011 out of which an amount of ₹14,985/- has been returned, whereas a cheque was issued by the petitioner for the amount of ₹1,00,000/- borrowed by the petitioner on 03.12.2011 which was through an account payee cheque issued by respondent-Ved Parkash and the said cheque was duly encashed by the petitioner and proved on record.

4. That apart, counsel contends that the judgments on which reliance has been placed by the counsel for the petitioner, are distinguishable as the same relate to the non-applicability of the Negotiable Instruments Act where the Court proceeded to hold that the commission agent did not have the licence for running a money lending business, which is not the case here. He contends that it is not in dispute that the principle amount due towards the petitioner has not been paid till date what to say of interest. He, therefore, contends that the conviction and sentence as ordered by the Courts below being in accordance with law, do not call for any interference by this Court and deserve to be upheld.

5. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the impugned orders as also the records of the case.

6. The signatures affixed on the cheque are not disputed by the petitioner which is a subject matter of the present claim i.e. cheque No.626208 dated 02.05.2012 for ₹1,40,000/- drawn on

Canara Bank, Branch Abohar. What has been asserted by the petitioner's counsel is that the amount mentioned therein has been forged and fabricated by the respondent as there was no liability on the part of the petitioner for which the cheque would have been issued for discharge thereof. Nothing has been brought on record substantiating the factum that it is a forged and fabricated document as no evidence was led by the petitioner before the trial Court.

7. On the other hand, respondent-Ved Parkash has been able to establish that an amount of ₹1,00,000/- was paid to the petitioner by way of an account payee cheque issued to the petitioner by him which has been encashed by the petitioner as is apparent from the entries in the passbook. The entry with regard to ₹55,000/- dated 27.06.2011 in the *bahi* maintained by respondent-Ved Parkash stands admitted by the petitioner as also the return of some money. The evidence which has been produced by the respondent clearly established the factum that the petitioner had issued cheque No.626208 dated 02.05.2012 in discharge of his legal obligation. The Courts below have rightly proceeded to consider the evidence which has been brought on record and convict the petitioner under Section 138 of the N.I. Act.

8. The judgments on which reliance has been placed by the counsel for the petitioner i.e. *Balbir Singh's case (supra)* and *Narsi Dass's case (supra)* would not be applicable to the present case as the said judgments are based upon the preposition that the commission agent who alleged to have given the money did not have the licence under the Money Lending Act which is not the position here. Although the respondent

is said to be a commission agent and the petitioner an agriculturist who had been selling his produce to respondent-Ved Parkash but as already observed above, the receipt of an amount of ₹55,000/- on 27.06.2011 has been admitted by the petitioner and the amount of ₹1,00,000/- which has been borrowed by him on 03.12.2011 also has been duly proved in the light of the fact that an account payee cheque of the said amount had been issued by respondent-Ved Parkash which has been duly encashed by the petitioner. In these circumstances, this Court does not find any cogent and convincing ground to interfere in the judgment of conviction passed by the Courts below.

9. As regards the quantum of sentence which is sought to be reduced, as pleaded by the counsel for the petitioner, the said plea does have some substance as the petitioner, admittedly is an agriculturist and has a family to support being the sole breadwinner, therefore, keeping in view the facts and circumstances of the present case, the sentence of the petitioner is reduced to 1 year and 3 months but the fine is enhanced to ₹10,000/- to be paid to the widow of respondent-Ved Parkash, namely, Veena Nagori.

10. With these observations, the present revision petition is disposed of.

11. In the light of the disposal of the petition, the application for suspension of sentence i.e. CRM No.28203 of 2016, stands disposed of as infructuous.

May 5th, 2017 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No