IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CRR No.1386 of 2017 (O&M)**
Date of decision : November 06, 2017

Gaurav Raj Verma **....... Petitioner**

Versus

Raghubir Kumar and another **....... Respondents**

2. **CRR No.1387 of 2017 (O&M)**
Date of decision : November 06 , 2017

Gaurav Raj Verma **....... Petitioner**

Versus

Raghubir Kumar and another **....... Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amit Jaiswal, Advocate for the petitioner.

Mr. P.S. Poonia, Advocate for respondent No.1.

Mr. R.K. Makkad, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

This order of mine shall dispose of two connected revisions bearing CRR Nos.1386 and 1387 of 2017, between the same parties, arising out of the same facts.

Respondent Raghubir Kumar file two criminal complaints i.e. complaint No.395, dated 29.02.2016 and complaint No.881, dated

05.03.2016, which were disposed of by the learned Judicial Magistrate 1st Class, Ambala, vide separate judgments of the same date i.e. 06.08.2016.

The facts of the complaints are that the present petitioner (accused No.1 therein), namely, Gaurav Raj Verma took a loan amounting to ₹20,00,000/- from the complainant (respondent No.1 herein) for promotion of his business. The said loan was advanced to the complainant by the present petitioner by way cheques on four different occasions i.e. a sum of ₹6,00,000/- advanced on 27.06.2012 and a promissory note of was executed by the petitioner in favour of the complainant in the presence of the witnesses. ₹5,00,000/- were advanced on 18.08.2012, ₹3,00,000/- were advanced on 18.10.2012 and ₹7,00,000/- were advanced on 06.02.2013, totaling ₹21,00,000/-. The petitioner also executed three promissory notes dated 18.08.2012, 18.10.2012 and 06.02.2013, regarding these three loan transactions. He had also agreed to pay interest @ 2% per month on all the aforesaid amounts. The land of the complainant in Sector-8 and Sector 9 etc. was acquired. Therefore, he had funds to advance the loan. To repay the said loan amount, in November, 2013, petitioner issued three post dated cheques bearing Nos.644962, dated 07.01.2016 for ₹7,00,000/-, 847853 dated 07.012016 for ₹6,00,000/- and 644952 dated 15.01.2016 for ₹5,00,000/-. Further in November, 2013, the fourth post dated cheque bearing No.644956, dated 15.01.2016 for ₹3,00,000/- was also issued. On presentation, all the aforesaid cheques were dishonoured by the bank with the remarks "Funds Insufficient". Regarding the aforesaid first three cheques, criminal complaint No.395, dated 29.02.2016 was filed (called first complaint) and regarding the 4th cheque, criminal complaint No.881, dated

05.03.2016 under Section 138 of the Negotiable Instruments Act, 1881, was filed (called second complaint) against the present petitioner and his father Ajay Verma.

Learned Judicial Magistrate 1st Class, Ambala, vide separate judgments dated 06.08.2016, decided both the complaints, vide which Ajay Verma was acquitted in both the complaints, whereas the present petitioner was convicted and sentenced for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in both the complaints. In first complaint No.395, dated 29.02.2016, which is regarding the three cheques, total amounting to ₹18,00,000/-, he was sentenced to undergo simple imprisonment for six months. He was also ordered to pay compensation to the tune of 1.5 times of the cheques amount i.e. ₹27,00,000/-. The said compensation was ordered to be paid within 30 days. In default of payment of fine, to further undergo simple imprisonment for three months. In the second complaint No.881, dated 05.03.2016, regarding the fourth cheque, amounting to ₹3,00,000/-, he was sentenced to undergo simple imprisonment for six months and ordered to pay compensation to the tune of 1.5 times of the cheque amount i.e. ₹4,50,000/- within 30 days. In default of payment of fine, to further undergo simple imprisonment for three months.

Against the decision of both the complaints, cross appeals were filed, whereby the petitioner challenged his conviction, whereas the complainant prayed for enhancement of sentence. The cross appeal pertaining to first complaint No.395, dated 29.02.2016, filed by the petitioner was dismissed, whereas the appeal filed by the complainant was allowed by the learned Addl. Sessions Judge, Amabala, vide judgment dated 28.02.2017 by enhancing the sentence awarded to the petitioner from simple imprisonment for six months to simple imprisonment for one year. However, the remaining part of the compensation was maintained. The cross appeals pertaining to second complaint No.881, dated 05.03.2016 filed by the petitioner as well as the complainant were dismissed by learned Addl. Sessions Judge, Ambala, vide judgment dated 28.02.2017.

I have heard learned counsel for the parties and have also carefully gone through the case file.

From a perusal of interim orders passed in both the revision petitions, it comes out that as per the order passed by this Court on 30.05.2017, learned counsel for the petitioner produced three demand drafts favouring the complainant, totaling to ₹10,00,000/- and sought interim bail as he was willing to compromise the matter. In the order passed on 24.07.2017, it was recorded that all the three demand drafts were handed over to the learned counsel for the respondent-complainant for further handing over the same to the complainant, subject to all just exception. However, thereafter, the petitioner did not pay any other amount to the complainant and the matter was heard on merits.

In CRR No.1386 of 2017, pertaining to first complaint No.395, dated 29.02.2016, learned counsel for the petitioner has argued that the petitioner has paid a sum of ₹9,00,000/- to the complainant and ₹10,00,000/- were paid before this Court. In this way, out of the total cheques amount of ₹21,00,000/-, ₹19,00,000/- have been paid to the complainant. In the first complaint No.395, dated 29.02.2016, the dispute is whether ₹9,00,000/- have been paid to the complainant or not?

A perusal of the original lower court record shows that the present petitioner not only issued cheques but also executed three pronotes and receipts. A perusal of those pronotes and receipts (Ex.CX to CZ) shows that three different photographs of petitioner were appended on these pronotes and he had thumb marked as well signed across the revenue stamps, wherein he agreed to pay the interest @ 2% per month on the cheques amount. The execution of the pronotes and receipts has not been denied, rather the plea is taken that ₹9,00,000/- have been paid on 13.12.2012 as reflected in the account statement (Ex.D2). Both the courts below have taken the view that the petitioner has failed to connect the payment of ₹9,00,000/- with the present cheques. Undisputedly, two other complaints against the petitioner were filed at Sirsa Court. One was filed by Savita Chaudhary wife of the complainant and other was filed by Jasbir Singh son of the complainant regarding issuance of cheques.

The examination of the statement of the complainant shows that the financial transactions between the parties have not been denied, rather the payment of ₹9,00,000/- has been pleaded. The execution of the pronotes and receipts have also not been denied. It was suggested to the complainant that the entire cheques amount has been paid. However, no details were put to the complainant as to how the cheques amount has been paid. The application for additional evidence for further cross examination of complainant was declined by the courts below as well as by this Court.

Learned counsel for the petitioner has further argued that the present cases were filed at Ambala, whereas the two other complaints were filed at Sirsa Courts and the trial was concluded within few months. Therefore, he could not give proper instructions to his counsel. Admittedly, there were several financial transactions between the parties. Therefore, the payment of ₹9,00,000/- dated 13.12.2012 is not connected with the post dated cheques dated 07.01.2016 and 15.01.2016. These cheques were issued in November, 2013. Therefore, I am of the view that both the courts below have rightly held that the petitioner has failed to connect the payment of ₹9,00,000/- with the first complaint No.395, dated 29.02.2016.

Regarding the second complaint No.881, dated 05.03.2016, payment of ₹3,00,000/- has been pleaded vide payment slips Ex.D-7 to D-13, which are from 25.10.2012 to 24.12.2012. The said amount was deposited in the account of Raghubir Kumar, complainant. Since, there were several financial transactions between the parties, therefore, it had to be put to the complainant that these payments were made regarding the cheque in question. However, during cross-examination, no such suggestion was put to the complainant nor these documents were put to the complainant. Therefore, keeping in view the fact that there were several financial transactions between the parties, these payments could not be connected with complaint No.881, dated 05.03.2016.

Moreover, I am of the view that the complainant has also issued pronotes and receipts in lieu of the loan. If the petitioner has repaid the entire or part amount of the loan, he would have insisted to return or cancel one or more pronotes and receipts. It was never suggested to the complainant nor proved before the courts below that the accused demanded pronotes and receipts from the complainant as he had paid the part or entire loan amount. No endorsement was also made on pronotes and receipts regarding the said part payment. If according to the petitioner, out of total loan amount of ₹21,00,000/-, ₹12,00,000/- have been paid, one or more pronotes and receipts would have been cancelled or endorsement regarding the said payments would be made on said pronotes. In the absence of such plea, it has to be assumed that the petitioner never demanded back the pronotes and receipts nor insisted for endorsement on the said pronotes and receipts. Therefore, his plea of payment of ₹9,00,000/- in the first complaint No.395, dated 29.02.2016 and ₹3,00,000/- in the second complaint No.881, dated 05.03.2016 was rightly discarded by the courts below.

Faced with these situation, learned counsel for the petitioner has argued that in this case, the lower appellate court enhanced the sentence in the first complaint No.395 dated 29.02.2016 from simple imprisonment for six months to simple imprisonment for one year, which is quiet harsh. The lower appellate court also maintained the compensation to the tune of 1.5 time of the cheque amount i.e. ₹27,00,000/- and ₹4,50,000/- respectively. It is prayed that considering the fact that out of total loan of ₹21,00,000/-, ₹10,00,000/- have been paid before this Court, the amount of compensation is on higher side. Therefore, prayer has been made for reducing the sentence as well as quantum of compensation. It is further prayed that since it was one loan transaction and four different cheques were issued regarding which two complaints were filed, therefore, sentence awarded in both the complaints should be ordered to run concurrently.

After careful examination of the prayer made by learned counsel for the petitioner, I am of the view that since at least ₹10,00,000/-

out of ₹21,00,000/- have been paid to the complainant before this Court, therefore, some leniency in the sentence and compensation is to be shown. The loan is stated to be advanced in the year 2012 and the payments were made before this Court in the year 2017.

Considering the entirety of the facts and circumstances, the sentence of simple imprisonment for 1 year awarded by the first appellate court in first complaint No.395, dated 29.02.2016, vide judgment dated 28.02.2017 is reduced to simple imprisonment for nine months, whereas the sentence of simple imprisonment for six months awarded in the second complaint No.881, dated 05.03.2016 is maintained. Since, it was one financial transaction, therefore, the sentence awarded to the petitioner in both the complaints are ordered to run concurrently.

So far as the amount of compensation is concerned, admittedly, out of ₹21,00,000/-, ₹10,00,000/- have been paid to the complainant before this Court. The amount of compensation awarded to the tune of 1.5 times of the cheque(s) amount is considered on higher side. As per pronotes and receipts, interest @ 2% per month on the cheques amount was payable whereas interest on fix deposit by bank is maximum 9% per annum.

In these circumstances, this Court is of the view that considering the rate of interest awarded by the bank and considering the fact that the complainant had to contest the cases before three courts, the compensation to the tune of equal sum of the cheques will meet the ends of justice. Accordingly, the compensation is also reduced to the equal amount of the cheques amount.

With the abovenoted modifications, both the revision petitions are dismissed.

Since the petitioner is on bail, therefore, he is ordered to be arrested and committed to jail to undergo remaining part of the sentence awarded to him in complaint No.395, dated 29.02.2016.

(KULDIP SINGH)
JUDGE

November 06, 2017
sarita

Whether speaking / reasoned Yes

Whether Reportable: No