

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1441 of 2017 (O&M)

Date of decision : December 21,2017.

Ram Bilas

... Petitioner.

Versus

Punjab State Civil Supplies Corporation Ltd. and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Mr. J.R. Dyal, Advocate for respondent No.1.

Mr. Sidakmeet Sandhu, AAG, Punjab
for respondent No.2-State.

SHEKHER DHAWAN, J.

Present revision petition is directed against the judgment dated 06.02.2017 passed by Additional Sessions Judge, Moga whereby the judgment of conviction and order of sentence dated 07.07.2012 passed by learned Judicial Magistrate Ist Class, Moga, was maintained. The petitioner was held guilty, convicted and sentenced to undergo imprisonment for a term of 02 years and to pay fine of Rs.10,000/- for commission of offence under Section 138 of the Negotiable Instruments Act (for short, "**the Act**"). In default of payment of fine, he was sentenced to further undergo simple imprisonment for one month.

2. Facts relevant for the purpose of decision of this revision petition; that on 13.10.2001, petitioner herein entered into an agreement with the complainant-department for custom of milling of paddy and he was entrusted with 68367 bags of paddy out of which 28460 bags were delivered. However, the petitioner failed to return the remaining bags and the balance quantity of rice remained in possession of the petitioner and the same was not accounted for. In order to make part payment of the said amount of Rs.69,92539/- being price of above said 5625.01 quintal of rice, the petitioner issued 14 cheques on different dates drawn on Central Bank of India, Moga which were handed over to the complainant with the assurance that the same would be encashed on presentation. The said cheques were presented by the complainant to its bankers for collection, but the same were returned un-encashed. Notice was issued to the petitioner regarding dishonouring of the cheques in question and the present petitioner responded to the same, vide his reply dated 17.06.2003, but failed to make the payment of above said cheques. On these facts, complaint under Section 138 of the Act was filed.

3. Learned trial Judge passed the summoning order and the parties were put to trial. Learned Magistrate after considering the prosecution evidence and defence version convicted and sentenced the present petitioner vide judgment of conviction and order of sentence dated 07.07.2012. As mentioned above, the appeal filed by the petitioner was dismissed vide judgment dated 06.02.2017 passed by Additional Sessions Judge, Moga.

4. Learned counsel for the petitioner, while arguing on the point

of innocence of the petitioner-accused, contended that both the Courts below have not considered the correct facts. In fact, the petitioner is innocent and he has already been convicted for the offence punishable under Section 406 IPC for the same matter and was sentenced to undergo Rigorous Imprisonment for two years vide judgment (Ex. PX) dated 17.11.2011 in case bearing FIR No.61 dated 21.03.2003, under Section 406, 408 IPC and Section 7 of Essential Commodities Act, 1955, registered at Police Station City, Moga and the appeal preferred by the petitioner against the said judgment of conviction, was also dismissed. The said judgment was also upheld by this Court and by Hon'ble Supreme Court also. The petitioner has already undergone the entire sentence in that case. Now, the conviction in the present case would be a matter of 'double jeopardy', which is against the basic spirit of the Constitution.

5. Learned counsel for the petitioner further contended that even the cheques (Ex.C2 to Ex.C15) in question were issued as security only and those have been misused.

6. Contention was also raised that there was no legal liability to make the payment of the amount detailed in the cheques and on that account also, the impugned judgment of conviction and order of sentence are liable to be set aside.

7. Learned counsel for the petitioner also raised the contention that the matter was pending by way of arbitration proceedings and award (Annexure P/4) was also passed on 6.11.2007 and on that account also, present complaint under Section 138 of the Act would not be legally maintainable, but the Courts below have completely ignored all these

aspects while recording the impugned judgment of conviction and order of sentence and the same be set aside.

8. Learned counsel for the respondents, while arguing on the above points, contended that the petitioner had taken all these pleas before the Courts below and the same have rightly been negated by the Courts below. There is no dispute regarding signatures of the petitioner on the cheques Ex.C/2 to C/15. The said cheques were issued for discharging legal liability and that was established in all the proceedings. The cheques were duly presented for encashment, but the same were dishonoured and despite issuance of legal notice, payment was not made.

9. Learned counsel for the respondents also contended that it is not a case of 'double jeopardy' at all, because the aforesaid FIR No.61 dated 21.03.2003 was registered on the allegations of misappropriation of the entrusted property and the said judgment has been maintained up to Hon'ble Supreme Court. The present controversy relates to dishonour of cheques Ex.C/2 to C/15 which has been well proved on the file and the present revision petition is liable to be dismissed.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that issuance of cheques in the present case is not disputed, if the entire case of the petitioner is taken to be correct. In fact, the petitioner is trying to take so many pleas, which are contradictory in itself. The contention having been raised by learned counsel for the petitioner that the cheques in question were issued as security, is based on the assumption that the cheques were duly signed by the present petitioner and that was for

existence of legal liability. Such a view was taken by Hon`ble Apex Court in **Don Ayengia Vs. State of Assam and Anr., 1016(1) R.C.R. (Civil) 991.**

If that be the case, the present petitioner cannot deny that the cheques were not issued in due course or that the same were not for discharging the legal liability. On these points, learned first Appellate Court has rightly placed reliance upon the provisions of Section 20 of the Act and on that basis, the complainant was certainly within its rights to recover the said amount.

11. Both the Courts below have rightly returned the finding that as per the provisions of Section 139 of the Act, there is valid presumption under the law, unless the contrary is proved that the holder of the cheques received the cheques in discharge of legal liability and that legal presumption has not been rebutted at all in this case.

12. As regard to the contention raised by learned counsel for the petitioner that present litigation is hit by the principle of 'double jeopardy' as enshrined under the Constitution, the same has already been discussed in detail by both the Courts below and rightly recorded the observation that FIR No.61 dated 21.03.2003 was registered under Section 406 IPC and the main allegations in the said FIR were entirely different in nature. A person can certainly claim that he cannot be tried twice for the same offence, but the present case is for an offence punishable under Section 138 of the Act and the offence under Section 406 IPC is entirely different in nature. Both the offences have different ingredients. FIR under Section 406 IPC was registered on the allegation that paddy was entrusted to the present petitioner, but he failed to return the same, which was a trust property with

him. The said conviction was recorded by learned trial Judge and the conviction was maintained upto Hon`ble Apex Court. As such, the present case is not hit by the principle of 'double jeopardy'.

13. As regard to the plea having been raised that arbitration proceedings were initiated, that establish the existing liability for issuance of cheques, which has been established as the award has been upheld by this Court. Otherwise, there is no illegality in the judgment of conviction recorded by learned trial Judge and the appeal having been dismissed by learned Additional Sessions Judge. Both the Courts below have already taken most reasonable view on the point of sentence and there is no ground warranting interference in the order of sentence as well.

14. Resultantly, the present appeal fails and stands dismissed.

December 21, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
Yes