

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

**CRR No.667 of 2017 (O&M)
Date of Decision: 28.04.2017**

Ravi Kumar BalmikiPetitioner

Versus

Raj Kumar and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. J.S. Grewal, Advocate
for the petitioner.

Mr. Aseem Kataria, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(ORAL)

[1]. Trial Court convicted and sentenced the petitioner to undergo simple imprisonment for 6 months and to pay a fine of Rs.1000/- under Section 138 of the Negotiable Instruments Act along with default clause. The conviction of the petitioner was maintained by the First Appellate Court.

[2]. At the time of issuance of notice of motion on 29.03.2017, a specific statement was made by learned counsel for the petitioner that the petitioner is ready to settle the dispute with the complainant provided some installments are made. Notice re: suspension of sentence was issued on that premise.

[3]. Today learned counsel for the petitioner submits that the petitioner is not interested in complying with the order dated 29.03.2017.

[4]. Faced with this situation, I proceeded to hear the

arguments on merits.

[5]. In view of Section 118(A) and Section 139 of the Negotiable Instruments Act, a reversible onus was upon the accused to rebut the presumption in the context of issuance of cheque. In view of evidence led by the complainant, issuance of cheque by the accused/petitioner was proved. Dishonouring of the cheque on presentation for want of funds was also proved. Thereafter, complainant issued notice to the accused.

[6]. In view of aforesaid evidence, the accused was required to rebut the presumption and in order to do so, he examined Manoj Kumar Bansal official of Canara Bank as DW 1, who brought some documents in respect of account of the accused. In his cross examination, the witness deposed that on 31.03.2012, an amount of Rs.4005/- was available in the account of the accused/petitioner. He further stated that there was no guarantee of Raj Kumar while opening the account of the accused/petitioner. The signature on the cheque was not denied by the accused/petitioner. The plea of the accused/petitioner was that his signed cheque was misused by the complainant after taking from Chand Kumar. The same stand was taken by the accused/petitioner in his statement under Section 313 Cr.P.C.

[7]. It is a settled principle of law that the standard of proof

required to rebut the presumption at the instance of the accused is based on preponderance of probabilities, whereas the standard required for the complainant is to prove the same beyond reasonable doubts. Petitioner could not prove the aforesaid requirement by leading any such evidence. The argument of the petitioner that the complainant was not having any capacity to lend such an amount and misused the cheque by obtaining the same from Chand Kumar, could not be proved by him by way of leading any evidence. No complaint was lodged by the petitioner in respect of alleged misuse of the cheque by the complainant after obtaining the same from Chand Kumar.

[8]. On 14.01.2016, the accused himself suffered a statement that he has effected a compromise with the complainant for Rs.60,000/- in all. He sought a period of two months to make good the payment and further undertook that in case he fails to make good the payment as per compromise he will be liable for the punishment in accordance with law. Further on 15.03.2016, one more opportunity was sought and granted in favour of the petitioner on the statement made by him, but even thereafter, he failed to honour the commitment and the amount as agreed was not paid.

[9]. In my considered opinion, the petitioner cannot be

allowed to breath hot and cold in the same breath. Even before this Court on 29.03.2017, learned counsel for the petitioner on behalf of the petitioner made a statement that he intends to settle the dispute with the complainant in case some installments are made in respect of the amount due. On aforesaid statement, notice of motion was issued. Having failed to honour the commitment, in my view, petitioner is not entitled to any indulgence at the hands of this Court. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

28.04.2017
prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No