

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

(1)

Crl. Revision No.892 of 2017 (O&M)

Date of Decision: April 26, 2017.

Rajinder Kumar Chopra

.....PETITIONER(s).

VERSUS

U.T. Chandigarh and another

.....RESPONDENT(s).

(2)

Crl. Revision No.900 of 2017 (O&M)

Rajinder Kumar Chopra

.....PETITIONER(s).

VERSUS

U.T. Chandigarh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

**Present: Mr. S.K. Guleria, Advocate
for the petitioner (s).**

Mr. Rajiv Sharma, A.P.P. for UT Chandigarh.

**Mr. V.B. Aggarwal, Advocate
for the complainant.**

SURINDER GUPTA, J.(Oral)

**Petitioner Rajinder Kumar Chopra was convicted and
sentenced in two separate complaints filed by Surinder Singh for the offence**

punishable under Section 138 of Negotiable Instruments Act, 1881 (for short-N.I. Act). In complaint bearing No.15046 of 2008, petitioner was awarded sentence to undergo simple imprisonment for six months and was directed to pay compensation of ₹5,70,000/- and in default of payment, to further undergo simple imprisonment for six months. In other complaint bearing 15047 of 2008, he was awarded sentence to undergo simple imprisonment for six months and was directed to pay compensation of ₹2,50,000/- and in default of payment, to further undergo simple imprisonment for six months. The appeals filed by the petitioner were dismissed by learned Additional Sessions Judge, Chandigarh.

The case of complainant-respondent No.2, in brief, is that he was desirous to go abroad and the petitioner on the assurance to send and settle him in Australia, took ₹10 lakh from him but failed to arrange working visa for him. Later on he handed over 7 cheques to the complainant for a sum of ₹7,20,000/-, which on presentation to the bank were dishonoured for want of sufficient funds. After issuing legal notice, the complainant filed above referred two separate complaints.

Learned counsel for the petitioner while assailing the judgments of the Courts below, has raised following three points for consideration:-

(i) All the cheques were issued to the complainant for discharge of alleged legal liability of ₹10 lakh due towards the petitioner, as such, the sentence awarded to the petitioner in two separate complaints have to run concurrently.

(ii) Respondent No.2 had filed civil suit for recovery of the amount allegedly due towards the petitioner but his civil suit was dismissed and

complaint under Section 138 N.I. Act for debt which cannot be recovered in a civil suit, is not maintainable. In support of his contention, he has relied on the observations of Gauhati High Court in case of ***Sri Don Ayengia Vs. State of Assam 2014(3) RCR (Criminal) 374..***

(iii) The appellate Court below in para 23 of the judgment passed in appeal No.1197 of 2013 has observed that in the present case, no loan was given, rather amount was given to go abroad. If it was not a loan amount and paid to the complainant for performing some unlawful illegal activity, the complaint for dishonour of the cheque given for discharge of such liability, is not maintainable. In support of his contention, he has placed reliance on the observations of Bombay High Court in case of ***Suhash Vs. Sachin 2015(Suppl.) Civil Court Cases 458.***

Learned counsel for complainant-respondent No.2 has conceded the first submission of learned counsel for the petitioner that substantive sentences awarded to the petitioner in both the cases shall run concurrently. However, he has submitted that payment of compensation in both the complaints is for separate cheques and the petitioner is liable to pay the same or to suffer the sentence in default of payment of compensation. He has further argued that civil suit filed by complainant-respondent No.2 to recover the cheque amount was dismissed being barred by limitation. This suit was filed after filing of the complaint, as such, has no bearing on the fate of these complaints. The complainant has not given the amount of ₹10 lakh to the petitioner for any illegal purpose. He has to arrange for sending and settling the complainant abroad. Visa for stay of complainant in Australia was to be legally obtained by him, as such, the argument of

learned counsel for the petitioner that the complaint is not maintainable, has no merits.

On giving a careful thought to the rival submissions, I find no merits in the submission of learned counsel for the petitioner. It is not disputed that the civil suit was filed by the complainant to recover the outstanding dues against petitioner after filing of the complaints and the same was dismissed being barred by limitation and this fact has no impact on these complaints.

The observations of Gauhati High Court in case of *Sri Don Ayengia Vs. State of Assam (supra)*, are not applicable to the facts of the present case. In that case, cheque was given as surety. Debtor was one Nazimul Islam, while the cheques belonged to one Haren Mudoi. The money was not recoverable from Haren Mudoi, accused No.1, under these circumstances, Gauhati High Court observed in para 13 as follows:-

“13. Under explanation to Section 138 of the NI Act the “debt or other liability means a legally enforceable debt or other liability”. Since the principal loan of Rupees Ten Lakhs was paid by the complainant to A-2 and since the respondent/A-1 herein was not a party to the original agreement dated 06.07.2007 the complainant cannot execute the promissory note and recover the amount from the respondent/A-1 by way of instituting a civil suit in a court. In my considered opinion, a debt which cannot be recovered in a civil suit cannot be allowed to be recovered by way of instituting a criminal case under Section 138 of the NI Act.”

Complainant had paid ₹10 lakh to the petitioner for arranging visa for him to stay and settle in Australia, which petitioner failed to

arrange. The payment was not made to the petitioner to indulge in any unlawful or illegal activity, as such, the observation of Bombay High Court in case of ***Suhash Vs. Sachin (supra)*** are not applicable to the facts of the present case.

The complainant had filed two separate complaints regarding seven cheques issued by the petitioner to discharge his liability towards him. The Appellate Court below has made reference to this fact in para 4 of the judgment as follows:-

“4. By not making the payment of the above said cheques within the stipulated period of 15 days as required under the law, the accused has made himself liable to be prosecuted under Section 138 of the Negotiable Instruments Act. As per the requirement of law, two separate complaints are being filed by the complainant. The present complaint relates to the cheques No.625250 dated 25.2.2008 for Rs.50,000/-, 625051 dated 03.03.2008 for Rs.60,000/-, 625252 dated 10.3.2008 for Rs.50,000/- and 612799 dated 05.02.2008 for Rs.3,60,000/-. A separate complaint relating to cheque No.625247 dated 12.2.2008 for Rs.1,00,000/-, 625248 dated 14.02.2008 for Rs.50,000/-, 625249 dated 18.2.2008 for Rs.50,000- is also filed.”

Learned counsel for complainant-respondent No.2 has fairly conceded that substantive sentences awarded in both the complaints are to run concurrently as all the cheques pertain to single liability of the petitioner.

As a sequel of my above discussion, I find no legal or factual infirmity in the judgments of the Courts below calling for any interference

Section 138 N.I. Act is concerned and the same is affirmed. However, this argument of learned counsel for the petitioner that both the substantive sentences awarded to the petitioner should run concurrently, is accepted and it is ordered that substantive sentence of simple imprisonment for six months awarded to the petitioner in both the complaints shall run concurrently and the petitioner shall also be liable to undergo simple imprisonment for six months for non-payment of compensation of ₹5,70,000/- and ₹2,50,000/- as imposed upon him by the Courts below, instead of undergoing separate imprisonment of six months for default of payment of both the amounts of compensations. Both the above-referred revision petitions are disposed of with above modification of sentence.

Copy of the judgment be sent to the Superintendent, Model Jail, Chandigarh.

April 26, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No