

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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Date of decision: 18.05.2018

CRR-2300-2017 & CRM-20367-2017

Parveen Devi

...PETITIONER

VS.

Krishan Goel and another

...RESPONDENTS

CRR-2334-2017

Parvesh Khurania

...PETITIONER

VS.

Krishan Goel and another

...RESPONDENTS

CRR-2335-2017 & CRM-20801-2017

Parvesh Khurania and another

...PETITIONERS

VS.

Krishan Goel and another

...RESPONDENTS

CRR-2338-2017 & CRM-20814-2017

Parvesh Khurania and another

...PETITIONERS

VS.

Krishan Goel and another

...RESPONDENTS

CRR-2341-2017

Parvesh Khurania

...PETITIONER

VS.

Krishan Goel and another

...RESPONDENTS

CRR-2301-2017

Parveen Devi

...PETITIONER

VS.

Krishan Goel and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr.Manav Bajaj, Advocate,
for Mr. Sumeet Goel, Advocate,
for the petitioners in all the cases

Mr. V.K.Jindal, Senior Advocate,
with Ms. Janya Sirohi, Advocate,
for respondent No. 1.

Mr. Sharad Kumar Yadav, DAG, Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to dispose of six criminal revision petitions, four preferred by Parvesh Khurania i.e. CRR Nos. 2334, 2335, 2338 and 2341 of 2017 and two by Parveen Devi i.e. CRR Nos. 2300 and 2301 of 2017 as they arise out of a judgment passed by the learned Judicial Magistrate Ist Class, Rohtak dated 05.03.2016, whereby the petitioners herein were convicted for having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and the order dated 16.03.2016 sentencing the accused i.e. Parvesh Khurania to undergo eight months of simple imprisonment, Parveen Kumar to undergo six months simple imprisonment and Parveen Devi to undergo one month simple imprisonment and also to pay 50% of the cheque amount by way of compensation to respondent No 1-complainant. On an appeal preferred by all the three convicts as well as the complainant, appeal of Parveen Kumar has been accepted by the learned Additional Sessions Judge, Rohtak vide judgment dated 02.06.2017 as also the appeal of the complainant-Krishan Goel for enhancement of sentence by sentencing appellant-Parvesh Khurania to undergo rigorous imprisonment for a period of two years and to pay fine of ₹10 lacs, in default thereof, to undergo simple imprisonment for two months while the sentence of Parveen Devi has been enhanced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹10 lacs, in default whereof, to undergo simple imprisonment for two

months, appeals of both the petitioners herein, namely, Parvesh Khurania and Parveen Devi were dismissed, which order has also been challenged in these revision petitions.

2. This Court had granted various opportunities to the petitioners . to come forward with a concrete proposal for discharge of the liability and even last opportunity was given for coming forward with a concrete proposal for an amicable settlement/compromise between the parties but no proposal has come forth on the part of the petitioners for an amicable settlement/compromise between the parties although senior counsel for respondent No. 1-complainant was always ready for the same. Finding the matter to be delayed on one pretext or the other at the behest of the petitioners, this Court called upon the counsel for the parties to address their arguments as the records of the Courts below have also been received in pursuance to an earlier order passed by this Court.

3. It is the contention of the learned counsel for the petitioners that the Courts below have proceeded on the wrong assumption that the initial onus with regard to there being any liability upon the petitioners qua the cheques in question is not sustainable as no cogent evidence has been placed on record by the respondent-complainant to substantiate the same. It is contended that the complainant has made an attempt to fasten the liability upon the petitioners claiming that an amount of ₹80,79,861.50 paise was outstanding against the petitioners as interest upon the amount of ₹1,36,53,067.12 paise. The cheques in question were issued as security without there being any liability of the petitioners to pay the amount to the complainant. Counsel submits that the presumption drawn under Section 138 of the Negotiable Instruments Act has been wrongly interpreted to be

not discharged by rebuttal by the petitioners merely because no positive evidence has been led by the parties. It is contended that the documents, on which the Courts below have placed reliance, cannot be said to be substantial enough to prove the plea of the complainant and would not be termed as cogent and convincing piece of evidence to hold the petitioners guilty of having committed an offence under Section 138 of the Negotiable Instruments Act. His submission is that as a matter of fact, five cheques amounting to ₹10 lacs each were given to the complainant, which were to be kept with him as security. He has manipulated the figure on the cheque amount by changing digit 1 to 7 making the cheque of ₹10 lacs as ₹70 lacs and had presented the same and it is for this reason that the payment was stopped.

4. As regards Parveen Devi is concerned, an additional plea has been taken that she was not incharge of the day to day working of the company. It has further been submitted that she had resigned as the Director of the company subsequent to the issuance of the cheques in question i.e. two cheques dated 30.05.2011 and 25.06.2011. Counsel contends that Parveen Devi was suffering from cancer, for which she was operated upon and, therefore, had not been indulging in the affairs of the company and had thus, no liability under Section 141 of the Negotiable Instruments Act. She is not the signatory to the cheques and had not placed any order to the complainant to supply paddy nor did she hand over the cheques in question to the complainant. Parvesh Khurania had issued these cheques but as these cheques were not issued in discharge of any legally enforceable liability, petitioners could not be held guilty of having committed the offence under Section 138 of the Negotiable Instruments Act.

An application under Sections 311, 391 and 293 of Cr. P.C. was filed by the petitioner-Parveen Devi for permission to produce her entire medical cancer treatment record by way of additional evidence before the learned Additional Sessions Judge, Rohtak in her appeal to substantiate her contention that she was not in a position to participate in the day to day affairs of the company. Her medical record would show and prove that she was suffering from cancer and due to her illness, she was unable to perform any functioning in the company. The dismissal of the said application is totally uncalled for by the learned Appellate Court vide order dated 01.06.2017, which cannot be sustained and deserves to be set aside. He, therefore, prays that these revision petitions be allowed and the judgments and order of sentence passed by the Courts below be set aside by acquitting the petitioners of the charges framed against them.

5. On the other hand, learned senior counsel for the complainant has referred to the judgment passed by the Lower Appellate Court to rebut the stand of the petitioners. He submits that the details, as mentioned in the complaint with regard to the transactions between the parties which have been duly supported by the evidence brought on record which are in the form of accounts of his firm, establish the liability of the petitioners. He contends that the factum of issuance of the cheques and the signatures thereon have not been disputed. It has also not been disputed that the petitioners were not the Directors of the Company at the time when the liability accrued and even on the date of issuance of the cheques in question because it is an admitted position that Parveen Devi submitted her resignation from the post of Director after issuance of the cheques. His submission is that the petitioners are not only the Directors of the Company

but as per the Article of Association (Ex. CW2/E), they are the promoters of the Company and are getting special remuneration/salary.

6. As regards the alteration, which is alleged to have been done by the complainant in the figure of the cheque amount, it has been asserted that no evidence has been placed on record to substantiate such assertion. He further states that none of the petitioners had taken a stand that there has been any manipulation in the cheques. Petitioners have not raised any probable defence which would indicate such manipulation having been done by respondent No. 1-complainant. His submission is that it is an admitted position and conceded by the counsel for the parties before the Appellate Court that the civil suit for recovery of ₹1,36,53,067.12 paise besides ₹ 80,79,861.50 paise as interest due towards the petitioners along with interest @9% has been decreed in favour of the complainant. He, therefore, submits that the onus with regard to there being no liability had shifted upon the petitioners especially in the light of the presumption as drawn from Sections 139 and 118 of the Negotiable Instruments Act. He contends that the plea, as has been taken by the petitioners before the trial Court while recording their statements under Section 313 Cr. P.C., is limited to the extent that there was no liability towards the complainant and they have been falsely implicated in this case. Apart from this plea, no other plea has been taken. This, the counsel contends, would go a long way to support the order dated 01.06.2017 passed by the learned Additional Sessions Judge, Rohtak while deciding the application preferred by the petitioner-Parveen Devi under Sections 311, 391 and 293 of Cr. P.C. for permission to produce additional evidence. No plea with regard to her illness was taken by her and, therefore, the evidence, which is sought to be produced on

record, has rightly been rejected. It has further been asserted that no specific details with regard to the documents, which are sought to be placed on record along with the dates for which they pertain, have been mentioned in the application about her health. The Court has, therefore, rightly proceeded to dismiss the said application as it was never the plea of the petitioner-Parveen Devi that because of her ill health, she was unable to participate in the affairs of the company. On this basis, prayer has been made for dismissal of the revision petitions.

7. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the records of the case.

8. Briefly, the facts are that the petitioners-Parvesh Khurania and Parveen Devi were the Directors of the Sheetal Riceland Ltd., a company incorporated under the Companies Act, and alleged to be responsible for the business activity being carried out by the company, as is apparent from the Article of Association (Ex. CW2/E) where they are shown to be promoters of the company and getting special remuneration/salary. Complainant-Krishan Goel is running his business under the name and style of Jai Jagdamba Trading Company and working as a commission agent for supply of food grain such as paddy, mustard, wheat etc. Complainant supplied paddy to the petitioners from time to time between 27.10.2009 to 13.11.2009 on credit basis. It was asserted that the payment of the paddy supplied shall be made within 15 days from the date of supply, which was not done by the petitioners during the course of business. Accounts were prepared in the normal course of business by the complainant. As per the statement of account, paddy worth ₹5,47,05,129.12 paise was supplied to

the petitioners between 27.10.2009 to 13.11.2009. An amount of ₹4,10,52,062/- was paid by the petitioners and an amount of ₹1,36,53,067.12 paise was still due towards the petitioners. As per the terms of business, petitioners were liable to pay interest on the amount due and, therefore, the complainant owed ₹ 2,17,32,928.62 paise which included interest to the tune of ₹80,79,861.50 paise. To discharge this liability, it is asserted by the complainant, two cheques amounting to ₹70 lacs, each was issued dated 30.05.2011 and another cheque amounting to ₹10 lacs was issued on 25.06.2011, which were handed over to the complainant by the petitioner-Parvesh Khurania when he visited the shop of the complainant along with his Manager, namely, Raj Sharma. At the request of the said petitioner that the cheques be encashed in the month of August, the complainant deposited the cheque amounting to ₹70 lacs for encashment, which was returned dishonoured on 06.09.2011 for stoppage of payment. The information from the bank was received on 07.09.2011. The cheque amounting to ₹10 lacs was also dishonoured on 13.09.2011 for the reason “Funds Insufficient”, which information was received by the complainant on 14.09.2011. A legal notice was duly served on 17.09.2011 at their residential address through registered as well as ordinary post but the same was returned back with an endorsement unclaimed. When the petitioners did not pay the cheque amount despite having knowledge of the legal notice, the complaint under Section 138 of the Negotiable Instruments Act has been filed.

9. Upon being summoned after recording of the preliminary evidence under Section 138 of the Negotiable Instruments Act to face trial, petitioners pleaded not guilty and claimed trial. After conclusion of the

evidence of the complainant, the statements of the petitioners along with the co-accused were recorded under Section 313 of the Cr.P.C. where they pleaded innocence and had also taken the plea that there was no liability towards the complainant and they have been falsely implicated in the case. On consideration of the pleadings and the evidence as well as the statements and arguments of the counsel for the parties, the trial Court held the petitioners guilty and sentenced them and in the appeal preferred by them, the same was dismissed except for that of the co-accused Parveen Kumar, who was acquitted by the Appellate Court. The appeal preferred by the complainant-Krishan Goel has been partly allowed enhancing the sentence of the petitioners, as has been recorded above.

10. As regards the contention of the counsel for the petitioners that there was no liability, in discharge of which, these cheques were issued, suffice it to say that apart from the statement of the complainant-Krishan Goel where he has placed on record, a copy of his ledger account showing the transaction between Jai Jagdamba Trading Company and Sheetal Riceland Ltd., which depicted an amount to the tune of ₹1,36,53,067.12 paise besides ₹80,79,861.50 paise as interest due towards the accused, there is an admission on the part of the counsel for the parties before the Appellate Court that a civil suit for recovery of the aforesaid amount along with interest @ 9% per annum has been decreed in favour of the complainant. That apart, Banarsi Dass, Clerk-cum-Record Keeper, Sales Tax Office, Kaithal, who appeared as CW4, has brought the records, wherein LP-7 form has been proved indicating deposit by M/s Sheetal Riceland Ltd. in the office of the Sales Tax , which has purchased paddy worth ₹5,25,99,369/- from the complainant, which is Ex. CW-4/A.

Petitioners have not denied the submission of LP-7 form Ex. CW-4/A with the Sales Tax Department. This clearly shows the existing liability towards the respondent. The initial onus has thus been discharged by the complainant. The plea with regard to issuance of cheques amounting to ₹10 lacs each as security also is not sustainable in the light of the judgment of the Hon'ble Supreme Court in **Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited**, 2016 (4) RCR (Civil) 487. The onus of rebutting the presumption as per Section 139 of the Negotiable Instruments Act had been on the petitioners and they have failed to discharge the same and, therefore, the plea of the petitioners that there was no liability, for which they would have issued the cheques, cannot sustain.

11. As regards the material alteration done by the complainant in cheque bearing No. 795356, which was for a sum of ₹10 lacs and was converted into cheque of ₹70 lacs and the date of issuance has been changed in another cheque also cannot be sustained as no evidence has been led by the petitioners in this regard and further, this was not the stand of the petitioners in their statement under Section 313 Cr. P.C. nor has this been put to the complainant in his cross-examination. It appears that the defence, which is now being sought to be taken by the petitioners, is an afterthought. It may be added here that the signatures on the cheques of Parvesh Khurania are not disputed and the issuance thereof has also not been questioned. The existing liability has also been established and, therefore, the pleas, as taken by the petitioners, cannot be accepted.

12. As regards the additional plea taken by the petitioner-Parveen Devi that she is not liable as per the provisions contained under Section 141

of the Negotiable Instruments Act for the reason that although she was a Member of the Board of Directors on the dates when the cheques were issued i.e. 30.05.2011 and 25.06.2011 but she was not responsible for the business activities being carried out by the company is concerned, suffice it to say that she had, according to her own plea, resigned from the post of Directorship on 17.02.2012, which is subsequent to the date of issuance of the cheques. As per the Article of Association of the Company (Ex. CW2/E), this petitioner was not only the Director of the Company but was also the promoter and was being paid remuneration in the shape of monthly payment or percentage of the profit, which fact is not disputed as no suggestion has been given to the complainant in his cross-examination. Even in her statement under Section 313 Cr. P.C., as recorded, no defence has been taken by her that she was not responsible for the affairs of the company as she was not doing any business on behalf of the company. In view of the above, the stand of the petitioner-Parveen Devi that she is not vicariously liable for the commission of offence, cannot be accepted.

13. As regards the plea of the counsel for the petitioner-Parveen Devi that the learned Appellate Court has wrongly dismissed the application under Sections 311, 391 and 293 of the Cr. P.C. preferred by her in the appeal for permission to prove her entire medical cancer treatment record by way of additional evidence to substantiate her contention that she did not carry out any business activity of the company, suffice it to say that there is no basis for leading such an evidence as this is not her defence in the statement under Section 313 Cr. P.C. A perusal of the application under Sections 311, 391 and 293 of the Cr. P.C. (Annexure P-1) preferred by the petitioner-Parveen Devi would show that no specific details with regard to

the evidence, which is sought to be placed on record, are available in the application and, therefore, the observations of the learned Appellate Court in its order dated 01.06.2017 cannot be said to be without any basis. Even the photocopies of the bills, which have been placed on record, relating to the illness of Parveen Devi would show that the surgery was conducted on her on 12.09.2011 for carcinoma of left breast and the discharge summary dated 12.01.2012 indicating that she had been admitted for chemotherapy. These documents are subsequent to the date of issue of the cheques i.e. May and June, 2011. No document has been placed on record which would show that prior to issuance of cheques, she was unwell and, therefore, was unable to perform the duties and responsibilities of the company as a Director. No reason except that the negligence on the part of the counsel, has been pleaded which would show that as to why the proposed evidence could not be produced before the trial Court. Even the cross-examination of the witnesses on her behalf would not indicate that she had not been able to manage the affairs of the company nor was she actively participating in the affairs of the company because of her illness. Not even a suggestion has been put to the complainant in this regard. The order dated 01.06.2017 passed by the learned Appellate Court while dismissing the application of the petitioner-Parveen Devi for leading additional evidence cannot be said to be flawed in any manner which would call for any interference by this Court.

14. It may be added here that despite various opportunities given by this Court to the petitioners to come forward with a concrete proposal for discharge of the liability, not a penny has been paid by the petitioners to the complainant despite indulgence shown by this Court which reflects upon the

intention and conduct of the petitioners. No proposal also has come from their side.

15. In view of the above, I do not find any merit in these revision petitions which would call for interference by this Court in the well considered and reasoned order passed by the Courts below, therefore, these revision petitions stand dismissed.

16. Bail of the petitioners stands cancelled and bonds forfeited to the State. Chief Judicial Magistrate, Rohtak is directed to procure the presence of the petitioners through non-bailable warrants of arrest.

CRM-20367-2017, CRM-20801-2017 & CRM-20814-2017

In view of the dismissal of the main revision petitions, these applications have been rendered infructuous and the same are disposed of as such.

**(AUGUSTINE GEORGE MAISH)
JUDGE**

May 18, 2018

pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No