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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2683 of 2017 (O&M)
Date of decision: March 28, 2018

M/s Balaji Cotton Mills and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Suresh Goel, Advocate for the petitioners.

Mr. Randhir Singh, Addl. AG Haryana.

None for respondent No.2.

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A.B. CHAUDHARI, J (Oral)

The present revision petition is directed against the impugned judgment/order dated 13.03.2015/16.03.2015 passed by the learned Judicial Magistrate Ist Class, Kaithal convicting the petitioner for commission of offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') and sentencing him to undergo Rigorous Imprisonment for one year and to pay compensation to the complainant in the sum of ₹17,42,842/-; and impugned judgment dated 03.05.2017 passed by the learned Additional Sessions Judge, Kaithal, in an appeal, upholding the judgment of the trial Court.

By the present impugned judgment/order dated 13.03.2015/16.03.2015 passed by the learned trial Court, the petitioner-Ghansham Dass stood convicted for commission of offence punishable under Section 138 of the NI Act and the following sentence was passed against him:-

> "*6. Therefore, considering the entire facts of the present case, convict is sentenced to undergo rigorous imprisonment for a period of one year for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. In view of Section 357 (3) of Code of Criminal Procedure, 1973, convict is directed to pay compensation to the tune of ₹17,42,842/- i.e. amount of cheque plus simple interest @ 9% per annum to the complainant within period of three months from today.*"

The law is trite of the subject that NI Act was enacted for such purpose.

Learned counsel for the revision-petitioner submits that the revision-petitioner is in jail since 03.05.2017, i.e. after the dismissal of his appeal by the Additional Sessions judge and would be completing the sentence of one year awarded to him, on 02.05.2018. Learned counsel, therefore, submitted that hardly a period of one month and few days is left for completion of the sentence of one year awarded to the petitioner. The revision-petitioner should therefore, be shown some mercy and he be sentenced to the sentence already undergone by him.

Learned counsel for the petitioners, on instructions from the petitioner, submits that he does not want to contest the conviction of the petitioner as above. However, as a revisional Court, this Court has a duty to decide the same to find out whether the finding of conviction is based on evidence or not.

In that view of the matter, I have gone through both the impugned judgments/orders made by the trial Court and the first appellate Court and the reasons recorded therein. Having gone through the same, I do not find any perversity on the part of the trial Court as well as first appellate Court to confirm the finding of conviction. In particular, I quote, the following Paragraphs, instead of stating in my own words, from the appellate Court's judgment to say that there is no perversity:-

> "*14. The cheque Ex.C1 was signed by the accused. It was in the sum of ₹17,42,842/-. CW-5 Kimti Lal appearing into the witness box clearly stated that the cheque was issued by the accused for discharging his legally enforceable liability on the basis of accounts. The learned trial court has rightly therefore took the presumption in favour of the complainant under section 139 of Negotiable Instruments Act wherein it has been mentioned that when a cheque is issued for the discharge of outstanding liability there is a presumption in favour of the same. The accused had basically took the plea that the cheque was issued as a security. Learned counsel for the accused argued that in fact this cheque was issued to the President, Aarati Association, Hissar in a panchayati compromise Ex.DW1/A in which a total number of 44 cheques were given and authority had been given to five persons namely Pawan Kumar Garg, President, Prem Kumar, Raj Kumar, Pawan Kumar and Jagdeep Kumar to dispose of the property of his firm M/s Balaji Cotton Mill if there had been any failure to make the payment. However, a careful perusal of the said compromise goes to show that the same does not mention name the complainant or the number of the present cheque being given as a security. The allegations were levelled that the complainant might have obtained cheque from the President, Mandi Association Hissar before 4.4.2013 and misused the same but this version also stands falsified as Pawan Kumar DW-1 who had been examined had nowhere stated that the complainant had taken the cheque in dispute from him. As per this witness all the persons were the shopkeepers of Mandi Hissar entered into compromise with accused. During his cross-examination he stated that neither he knew about M/s Gopi Ram Cotton Mills nor M/s Gopi Ram*

Cotton Mills are the members of Association of Mandi, Hissar. The cheque was presented on 14.05.2013 and the same was received back dishonoured vide memo dated 14.05.2013 on the ground of "stop payment". No evidence has been led by the accused to show that "stop payment" was not because of insufficiency of funds but because of some other valid reasons. Rather Ex.C9 the copy of Account Ledger Inquiry goes to show that the accused had not sufficient amount to dishonour the cheque and therefore trial court righty held that accused intentionally stopped the payment by moving the application Ex.C10.......

...

19. Further the statement of account Ex.P5 goes to show that there were previous transactions between the accused and the complainant who after purchasing the cotton seeds from the complainant firm on credit had been making payment to the same. The accused had transacted with the complainant till 26.05.2012 and an amount of ₹17,49,582/- remained balance for which the cheque was issued. When the cheque was presented the same was received back with the remarks "Stop Payment". Therefore the cheque was issued for legally enforceable debt. There is no illegality or infirmity in the judgment of learned trial court convicting the accused under section 138 of Negotiable Instruments Act and therefore the judgment of the learned trial Court is upheld. The conviction is also upheld."

I agree with the aforesaid findings recorded by the trial Court and upholding the same by the first appellate Court. In so far as the sentence is concerned, I find that in the second part of the order dated 16.03.2015 of sentence, in Para 6 cited supra, the trial Court has awarded compensation in the sum of ₹17,42,842/- with simple interest. The said part of the sentence cannot be disturbed by this Court. However, this Court is entitled to consider the aspect about the sentence awarded to him, namely, one year and the fact that he has undergone almost the entire one year's sentence save and except a month and a few days. In that view of the matter, following order is passed:-

ORDER

(i) The present revision petition, i.e. CRR No.2683 of 2017 is partly allowed;

(ii) Impugned judgment dated 13.03.2015 passed by the learned Judicial Magistrate Ist Class, Kaithal convicting the petitioner for commission of offence under Section 138 of the NI Act and order of sentence dated 16.03.2015 sentencing him to pay compensation only, and impugned judgment dated 03.05.2017 passed by the learned Additional Sessions Judge, Kaithal, in an appeal, are confirmed;

(iii) Impugned order dated 16.03.2015 passed by the learned Judicial Magistrate Ist Class, Kaithal sentencing the petitioner to undergo rigorous imprisonment for one year and impugned judgment dated 03.05.2017 passed by the learned Additional Sessions Judge, Kaithal confirming the sentence, in an appeal, are modified with the sentence the petitioner has already undergone.

(A.B. CHAUDHARI)
JUDGE

March 28, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No