

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 3039 of 2017

Date of decision: 02.07.2018

Joginder Singh

... Petitioner

vs.

Iqbal Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr. Ajay Singla, Advocate,
for the petitioner.

Mr. Sandeep Bakolia, Advocate,
for respondent no. 1.

Ms. Monika Jalota, D.A.G., Punjab.

...

AMOL RATTAN SINGH, J. (Oral)

By way of this revision petition, the petitioner challenges the judgments of the learned trial Court (Additional Chief Judicial Magistrate, Moga), as also of the appellate Court (Additional Sessions Judge, Moga), by which he has been convicted for having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to 02 years rigorous imprisonment, in addition to a fine of Rs. 10,000/- being imposed upon him, in default of payment of which he is to further undergo rigorous imprisonment for a period of 02 months.

2. The complaint against the petitioner was filed by respondent no. 1 herein, Iqbal Singh, alleging that he had advanced loans to the petitioner, in discharge of which (including the interest upon the principal loaned), he issued cheque no. 601841, dated 01.03.2014, for an amount of

Rs. 3,53,334/-, drawn on his bank account no. 13152, in the Punjab and Sind Bank.

The cheque having been presented by the complainant in his bank (Bank of India), it was dishonoured on account of insufficient funds, with a memo dated 03.03.2014 received from the bank.

Thereafter, the complainant is stated to have got issued a legal notice to the petitioner on 18.03.2014, sent by registered post, calling upon him to make good the amount of the cheque within 15 days.

The payment not having been made and in fact no reply stated to have been given by the petitioner to the legal notice, the complaint came to be filed.

3. The complainant examined himself as CW-1 and tendered by way of documentary evidence, the cheque, the bank memo, another memo dated 04.03.2014, a copy of the legal notice, as also a postal receipt, as Exs. C-1 to C-5 respectively.

4. The petitioner, on the other hand, in his statement under Section 313 Cr.P.C. [actually under Section 263 (g)], denied having taken any money from the complainant, or even having any nature of relationship with the complainant or his family, his plea being that he had met the complainant through one Sukhpal Singh, with whom the complainant had relations, and that the complainant had also got registered FIR No. 125 dated 17.06.2014, arraigning as accused therein the aforesaid Sukhpal Singh, and Surinderpal Singh, Bhola Singh alias Parminder Singh and Subhash Chander; for (allegedly) having committed offences punishable under Sections 420, 465, 468, 471 and 120-B IPC.

5. Thereafter, as per the petitioners' statement, the complainant also named the petitioner in the FIR as an accused "due to political influence", whereas as per the petitioner he had not signed any agreement or sale deed (as was the subject matter of the allegations made in the FIR).

Further, as per the petitioner, he was approached by the complainant to settle the dispute between himself and Sukhpal Singh and though he had settled the dispute, the father of the complainant resiled therefrom.

6. Thus (as per the judgment of the learned trial Court), the petitioners' stand in his statement under Section 313 Cr.P.C. [actually under Section 263 (g)], was to the aforesaid effect, with him also having stated that he did not receive any notice from the complainant.

7. Having appraised the evidence led before it, the trial Court rejected the contention made by counsel for the petitioner, to the effect that no loan having been shown to have been actually advanced at any point of time by the complainant to the petitioner, with no witness also led to prove such advancement of loan, there actually was no liability in the discharge of which the cheque was issued; the stand of the petitioners' counsel in arguments before the trial Court being that as a matter of fact the petitioner had issued the cheque in question only by way of security as regards the dispute between the complainant and Sukhpal Singh (the petitioner allegedly being the mediator between them).

8. Thus, as per the argument raised before that Court, the petitioner had only stood as surety for the agreement between the two disputing parties, (the dispute being that the complainants' wife having

entered into an agreement with one Subhash Uppal for the purchase of some land, the land was actually sold by Subhash Uppal to someone else, though he had taken money from the complainants' wife. In fact the FIR was in respect of that dispute, as already referred to hereinabove).

9. The trial Court, however, held that the presumption raised under Section 139 of the Negotiable Instruments Act, not having been successfully rebutted, with the petitioner not denying the issuance of the cheque, it could not be accepted that the cheque in question was issued merely by way of security.

Even though the complainant admitted that he had got an FIR registered against the persons hereinafore mentioned (including the petitioner), the factum of the FIR having been registered, as per the trial Court, would not raise a presumption that actually the cheque was issued by way of security/surety and in fact, in his statement under Section 313 Cr.P.C., the trial Court found that the plea with regard to the cheque having been issued by way of surety/security had not been taken.

(It is to be noticed here itself that though the trial Court has in the earlier part of its judgment recorded that the petitioner had admitted to mediating between the complainant and the aforementioned Sukhpal Singh, it is not recorded at that stage also that the petitioner had stated that he had issued the cheque in question by way of surety/security. Thus, the issuance of the cheque by way of security/surety, was obviously taken only by way of an argument by counsel for the petitioner before that Court).

10. It was further held by the trial Court that had the cheque been issued by way of security, either Subhash Uppal or Sukhpal Singh could

have been examined by the petitioner and further, even the FIR was not actually proved by way of evidence led, but was only produced in Court, and therefore, could not be considered to be evidence.

11. Consequently, holding that the petitioner had not disputed his signature on the cheque, he was held guilty of the commission of the offence in question and sentenced to imprisonment as noticed hereinabove.

12. The petitioner having filed an appeal, the learned Additional Sessions Judge after noticing the essential facts, also recorded in his judgment that the FIR referred to hereinabove had been tendered by way of additional evidence before the appellate Court, with the application for doing so having been allowed. Yet, that Court came to the same conclusion as had the trial Court, to the effect that the petitioner not having denied the issuance of the cheque, with no evidence led by him to show that it was issued by way of surety/security, even though the complainant could not remember as to in which language the cheque was written or in which language the cheque was signed by the petitioner, that did not alter the fact that the cheque actually was issued, and that there was no evidence to rebut the presumption raised in terms of Section 139 of the Act.

That Court also held (as had also the trial Court), that the land dispute between the complainant and Subhash Uppal etc., involved an amount of about Rs. 2,00,00,000/- (Two crores) and therefore, in any case, a surety/security cheque for an amount of Rs. 3,53,334/- would not have been accepted by the complainant.

13. Yet further, it was also observed by the appellate Court that even if it could be assumed that the accused had issued the cheque in order

to settle that dispute, it could not be held to be a cheque without consideration, as the plea raised was that it was to compensate the complainant for the fraud played upon him; hence, then too, it would be a liability (in discharge of which the cheque was issued).

14. Holding as above, the appeal of the petitioner was dismissed by that Court, also upholding the sentence imposed upon him by the trial Court.

15. Before this Court, Mr. Ajay Singla, learned counsel for the petitioner, other than reiterating what has already been narrated hereinabove, submitted that with no amounts of the loan taken by the petitioner from time to time having been shown at any point of time before the courts below by the complainant, either by way of the complaint itself, or even in the legal notice issued prior to that, those courts have erred in holding that the cheque was issued in discharge of a liability incurred.

Mr. Singla also pointed to that part of the cross-examination of the complainant as CW-1 before the trial Court (he having produced a copy of the testimony), in which the complainant stated that all amounts of the loan were taken in the presence of “all family”, but with no written record as to the amounts so taken, in installments.

16. Learned counsel next referred to the admission by the complainant with regard to registration of a criminal case against the petitioner and others, at the instance of the complainant, to submit that the findings by the courts below are therefore wholly erroneous and in fact, perverse.

Learned counsel also referred to various judgments of this

Court, and one of the Supreme Court, as follows:-

- (1) **Vijay** vs. **Laxman and another** (2013) 3 SCC 86;
- (2) **Ravinder Pal** vs. **Krishan Lal** 2015 (8) RCR (Criminal) 76;
- (3) **Suresh** vs. **Narender Gautam** 2016 (1) RCR (Criminal) 798;
- (4) **Vikas Sethi** vs. **Sumit Bhasin** 2016 (1) Rajdhani LR 453;
- (5) **Punit Kumar** vs. **Mohan Lal** (Binder) 2016 (5) RCR (Criminal) 886;
- (6) **Pritpal Singh** vs. **Manoj Kumar** 2016 (5) RCR (Criminal) 884;
- (7) **Ashish Kumar** vs. **Diwan Chand** 2017 (1) L.A.R. 314 and
- (8) **Baldev Singh** vs. **Daljit Singh alias Baggu** 2015 (35) RCR (Crl.) 615.

17. Per contra, Mr. Sandeep Bakolia, learned counsel appearing for the respondent-complainant, reiterated what has been held by the learned courts below, specifically to the effect that even as per the FIR, the land in dispute was valued at approximately Rs. 2,00,00,000/- (Two crores) and hence, the question of accepting a so called 'security cheque' of an amount of slightly over Rs. 3,50,000/-, was wholly illogical and therefore, that argument could not be accepted and was rightly rejected by those courts.

Learned counsel for respondent no. 1 (respondent no. 2 being the State of Punjab, only for the purpose of determining the period spent by the petitioner in custody), also relied upon two judgments of the Supreme Court, in **T. Vasanthakumar** vs. **Vijayakumari** (2015) 8 SCC 378 and **Rangappa** vs. **Mohan** 2010 (5) JT 259, to further his arguments, also contending that the judgment strenuously relied upon by learned counsel for the petitioner, in **Vijays'** case (supra), was on wholly different facts and circumstances and therefore, would not be applicable to the case at hand.

18. Having considered the judgments of both the Courts below, as also the arguments of learned counsel for the parties, I find that Mr. Singla, learned counsel for the petitioner, has cited a very 'pertinent' judgment in **Vijay v. Laxmans'** case.

I fully agree with learned counsel that the respondent-complainant was not in any manner able to actually prove the advancement of any kind of loan, even by way of producing any other witness to corroborate his sole oral testimony.

19. Before I go on to give reasons in this case, a very brief conspectus of the facts in **Vijays'** case, as also what was held by the Supreme Court, needs to be adverted to.

In that case also, the contention of the complainant was that the accused had borrowed Rs.1,15,000/- from him, towards repayment of which he issued a cheque for the same amount, which when presented to the bank was dishonoured for reason of insufficient funds.

The case of the accused in that case, on the other hand, was that he was a milk vendor, who supplied the milk to the complainants' father who was running a dairy farm, and as per practice, he received an advance from the complainants' father (towards supply of milk for a period of one year) and by way of security, a cheque was given to the complainants' father. When the accounts were cleared after the end of the year, the accused demanded the return of the cheque which the complainants' father initially avoided and thereafter, an altercation having taken place between them, an FIR was registered against the complainants' father by the accused.

The very next day the cheque was presented to the bank, which

was dishonoured, leading to the institution of the complaint under Section 138.

After considering the issue and citing an earlier judgment in *M.S. Narayana Menon v. State of Kerala*, (2006) 6 SCC 39, as also other judgments, their Lordships (in Vijays' case) held that the learned Single Judge of the Madras High Court (in that case) had not made any error in holding that no evidence with regard to advancement of a loan could be proved by the complainant, as even his father was not examined, though he was very much present outside the Court.

Thus, with no evidence other than the complainants' own testimony having been led to prove any advancement of a loan to the accused, it was (effectively) held that the presumption raised under Section 139 of the Act of 1881, stood successfully rebutted.

20. In the present case also, despite the complainant having taken a stand that he had advanced loans to the petitioner-accused at different points of time, including in front of a family members, he led no evidence whatsoever with regard to any such loan advanced, other than his own oral testimony to that effect.

No doubt, Section 139 of the Act stipulates that “unless the contrary is proved”, it shall be presumed that the holder of a cheque received such cheque for the discharge of any debt or liability. Yet, in the opinion of this Court, at least some semblance of evidence, other than the complainants' own testimony, is required to be led, to show that such a loan was actually given by a complainant to an accused, failing which it cannot be held that the presumption in favour of the holder of a cheque, has gone

unrebutted.

That is to say, unless some evidence other than the sole oral testimony of the complainant is led, to prove the advancement of a loan to an accused, the presumption stipulated in Section 139 would stand rebutted as a general principle, depending upon, of course, the circumstances of each case.

21. In the present case, in my opinion the advancement of the loan as per the case set up by the complainant cannot be said to have been proved, with the case of the petitioner (accused) throughout being that the cheque had been advanced by way of 'a security', the petitioner acting as a mediator between the complainant and one Sukhpal Singh, in respect of a dispute involving the complainant and his wife on one side, and Sukhpal Singh, Subhash Chander and Bhola Singh/Parminder Singh on the other side.

In this case also, an FIR stood registered at the instance of the complainant against the accused (the petitioner also having been arraigned as one such accused), for the commission of offences punishable under Sections 120, 165, 468, 471 and 120-B IPC.

22. However, the difference between the present case and Vijays' case, is that there is not shown to be any business dealing whatsoever between the petitioner and the complainant, and therefore obviously the cheque issued by the petitioner in favour of the complainant was not for the discharge of any loan, but (as has also been observed by the learned appellate court), may have possibly been by way of consideration for any role played by the petitioner in the transaction that is alleged to have taken

place between the complainants' wife and the aforesaid Subhash Chander, with the other co-accused in the FIR, Sukhpal Singh, also seemingly having played some role.

23. I also agree with the reasoning given by the learned Courts below, that a cheque of Rs.3,53,334/- could not have been accepted by way of security, as was projected by the petitioner, for discharge of a liability of Rs.2 crores, and therefore, the cheque issued was possibly only to compensate the petitioner for any role that he may have played in the transaction in question, which obviously did not go in favour of the complainant. The cheque having been dishonoured, the settlement seemingly arrived at between the petitioner and the complainant fell through, thereby (again possibly) leading to the petitioner also being arraigned as an accused in the FIR, which was registered about 3 ½ months after the cheque was dishonoured.

24. The question therefore is, whether the possibility of the cheque having been issued as consideration for discharging the petitioner from any liability that he may have incurred even as a mediator in any settlement of the dispute between the petitioner and the aforesaid Subhash Chander and Sukhpal Singh, can be taken to be sufficient 'fortification' of the presumption that is raised in Section 139.

Though I am not disinclined to hold that in such circumstances, the story of the petitioner that the cheque issued was towards part discharge of a monetary liability (i.e. Rs.2 crores) is not a believable story, the cheque in question being for only Rs.3.53 lacs; yet, it would be, in my opinion, difficult to apply the presumption raised under Section 139, in favour of the

complainant, because of the specific stand that he took in his complaint, i.e. that the cheque had been issued towards discharge of loans given by him to the petitioner at various points of time, along with interest thereupon. This Court already having held that with no evidence led whatsoever with regard to any loan having been advanced by the complainant to the petitioner, the presumption under Section 139 also could not be held to apply in his favour, even as per the judgment in Vijays' case (supra), and the said presumption also cannot be raised in favour of the complainant, on this Court assuming that the cheque was not issued towards discharge of any loan but towards discharge of other consideration in settlement of the dispute.

In fact, though initially I was inclined to dismiss the petition while reducing the sentence imposed upon the petitioner to the extent already undergone by him, on a presumption that he played some role in mediation by which the complainant suffered to some extent, and therefore he (the petitioner), to settle the matter qua himself, issued the cheque; however, upon further consideration of the matter, I would hold that the presumption under Section 139 cannot enure in favour of the complainant on the aforesaid assumption of this Court, which is wholly contrary to the case set up by him in his complaint, in respect of which he even testified before the trial Court; and therefore, even if this Court may otherwise harbour a notion that the cheque may have been issued towards discharge of some liability, by way of consideration as regards some negative role possibly played by the petitioner in trying to settle a dispute between the complainant and Subhash Chander etc., such notion cannot lead this Court to hold, even while finding that there was no corroboration at all of the case

set up by the complainant (as regards any loan taken by him), that the presumption raised under Section 139 would still hold in his (complainants') favour.

25. Hence, having found that the complainant could not lead any evidence, whatsoever, other than his own oral testimony, to show that the loan had actually been advanced by him at any point of time to the petitioner, then in the light of the ratio of the judgment in Vijays' case (with no loan proved at all to have been advanced), the petitioner has to be granted benefit and acquitted of the charge framed against him under Section 138 of the Negotiable Instruments Act. Consequently, granting such benefit, the petition is allowed and the petitioner is hereby acquitted of the charge framed against him, with him to be released from custody forthwith.

26. It is however made absolutely clear, that all observations made by this Court herein above are wholly in the context of the commission of an offence punishable under Section 138 of the Act of 1881, and would have no bearing whatsoever on the proceedings against the petitioner and his co-accused as regards FIR no.125 registered on 17.06.2014 at Police Station City Moga, which proceedings would go wholly on their own merit, as per the evidence gathered/led in that case.

July 02, 2018.
nitin/vikas

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes