

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 3834 of 2017 (O&M)

Date of decision : 6.3.2018

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Kulwant Singh

.....Petitioner

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Jagjit Singh, Advocate the petitioner.

Mr.Ramandeep Sandhu, Senior DAG, Punjab.

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H. S. Madaan, J.

On a complaint under Section 138 of the Negotiable Instruments Act, having being filed by complainant Malkit Singh against accused Kulwant Singh, on the allegations that the latter had issued a cheque bearing No.218225 dated 16.8.2010, in the sum of Rs.3,60,000/- drawn on Bank of India, Branch Vijay Nagar, Amritsar, in favour of the former, on account of discharge of a financial liability, however on presentation, the cheque was returned thrice by the banker with the remarks "funds insufficient". On being informed regarding the same and on service of legal notice dated 22.12.2010, by the complainant upon the accused, the accused had failed to make the payment within statutory period, after trial, the accused was convicted for an offence under section 138 of the Negotiable

Instruments Act, by vide judgment dated 30.7.2014, passed by Judicial Magistrate 1st Class, Kapurthala and vide order of even date, he was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/-, and in default of payment of fine to undergo further imprisonment for three months. The accused convict had preferred an appeal to the court of Sessions, which was disposed of vide judgment dated 23.8.2017 by the Additional Sessions Judge, Kapurthala, in as much as the appeal filed was dismissed. The accused was taken into custody and sent to jail to undergo the sentence.

The accused convict has approached this Court by way of filing the present revision petition, notice of which was given to the complainant but it was reported that he has since expired. On an application having been moved by the revision petitioner, his legal representatives were brought on record. They were served but they did not put into appearance.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record and I find that the complainant had successfully proved the ingredients of offence under Section 138 of the Negotiable Instruments Act, with regard to the accused. The trial Court has dealt with the submissions raised by counsel for the accused there that the cheque in question had been given as a security to the finance company, though the entire amount was paid and truck was transferred in the name of accused but blank cheques given as a security were misused by the complainant, who had stolen the same, filled up the cheques and then filed the criminal

complaint. This contention was discussed and disbelieved in view of Section 139 of the Negotiable Instruments Act drawing presumption in favour of the holder and shifting the burden upon the accused to show that there was no debt or liability towards him. However, the accused has failed to discharge that onus in the case. The trial Magistrate has referred to the case law, evidence adduced by the parties, facts and circumstances of the case while rejecting the contentions put forwarded by counsel for the accused. I find myself in agreement with the reasoning given by the trial Magistrate, while convicting the accused and by the Court of Sessions, while dismissing the appeal.

The judgments passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity with the judgments passed by the Courts below which might have called for interference by this Court, while exercising revisional jurisdiction. It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge. This is not the case here. Therefore, the impugned judgments are upheld on the point of conviction.

Regarding the sentence part, the revisionist convict has been sentenced to substantive sentence of imprisonment for one year. Out of the same, as per custody certificate, he has undergone total sentence of 7 months and 1 day.

I am of the considered view that ends of justice would be

adequately met if the sentence of the revision-petitioner is reduced to the one already undergone by him in this case, while maintaining the fine part. It is ordered accordingly.

The revision petition stands disposed of with such modification in the sentence.

6.3.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No