

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1123-2018 (O&M)
Date of Decision: 30.10.2018

Sunita Gupta

...Petitioner

vs.

Mahinder Kaur and Anr

..Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Mohd Salim, Advocate
for the petitioner.

Mr. Vikas Bishnoi, Advocate
for respondent No.1.

Mr. Naveen Sheoran, DAG, Haryana
for respondent No.2-State.

ARVIND SINGH SANGWAN,J

Prayer in this petition is for setting aside the judgment dated 10.02.2015 passed by the trial Court vide which the petitioner was held guilty for commission of offence punishable under Section 138 of the Negotiable Instruments Act (for short 'N.I.Act') as well as order dated 13.02.2015 vide which he was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay the compensation to the tune of the cheque amount i.e. Rs.13,90,000/- with a further rider that in case, the compensation is not paid, he shall further undergo simple imprisonment for a period of 03 months and judgment dated 13.03.2018 passed by the Lower Appellate Court vide which the appeal filed the petitioner was dismissed.

Brief facts of the case are that respondent No.1 filed a complaint under Section 138 of the N.I.Act with the allegations that the petitioner was known to her and was having friendly relation with her. The

petitioner had obtained a loan of Rs.12 lacs from respondent No.1 on different occasions and promised to repay the same till 11.12.2011. She has also executed an agreement dated 06.03.2010 in this regard. The appellant has further issued four cheques from her account No. 07832191003842 of Oriental Bank of Commerce (OBC), Hisar in favour of the respondent No.1 on the same day and promised to repay the amount alongwith interest upto 11.12.2011 and has agreed that if she will not pay the amount on 11.12.2011, she will get back the aforesaid four cheques and will issue fresh cheques of the aforesaid amount and interest in favour of respondent No.1. It is further alleged that on 11.12.2011, as per the terms and conditions of the agreement, the petitioner-accused received back aforesaid four cheques from respondent No.1 and in discharge of an existing outstanding and legally enforceable liability, the petitioner-accused had issued a cheque bearing no. 078707 dated 11.12.2011, for a sum of Rs.13,90,000/- drawn on OBC, Kaimri Road, Hisar, in favour of the respondent No.1, which was got dishonoured with the remarks **“funds insufficient”** vide memo dated 16.12.2011. Consequently, a legal dated 24.12.2011 was issued to the petitioner-accused affording him 15 days time to make the payment of the cheque, but of no avail.

After considering the evidence available on record, the learned trial Court held the petitioner-accused guilty for commission of offence punishable under Section 138 of the N.I.Act, as referred to above.

Feeling aggrieved with the same, the petitioner has preferred an appeal before the First Appellate Court which was also dismissed vide impugned judgment dated 13.03.2018.

Hence the present revision petition.

During the pendency of the present petition, the sentence of the petitioner was suspended vide order dated 23.05.2018 and, thereafter, on joint request of learned counsel for the parties, the matter was referred to the Mediation and Conciliation Centre of this Court and the Mediator has submitted the agreement/settlement arrived at between the parties, Clause 7 thereof reads as under:-

“That both the parties have agreed to resolve the present dispute amicably on the following terms and conditions:-

a). That both the parties mutually settle to end their financial dispute on total payment of Rs.10,00,000/- (Rupees Ten lacs only) by the petitioner to respondent No.1. This amount is settled to be full and final amount to end their present dispute.

b). That four demand drafts i.e. draft No. 627961 dated 01.10.2018 for an amount of Rs.1,50,000/-, No.627962 dated 01.10.2018 for an amount of Rs.2,00,000/-, No.627963 dated 01.10.2018 for an amount of Rs.2,00,000/- all drawn on Yes Bank and draft No.021496, dated 03.10.2018 drawn on Axis Bank for an amount of Rs.4,50,000/-, totally amounting to Rs.10,00,000/- in the name of Mahinder Kaur will be handed over to her today in the Hon'ble High Court itself when the case file is sent back to the Hon'ble High Court. Earlier Rs.2,00,000/- (Rupees Two Lacs only) have already been paid by the petitioner-Sunita Gupta to Mahinder Kaur-respondent No.1 on 23.05.2018. The photo copies of Demand Drafts are annexed herewith.

c). Mahinder Kaur-Respondent No.1 says that she has no objection if the present Revision Petition is accepted and the petitioner is acquitted by the Hon'ble High Court and she is ready to make any kind of statement in the Hon'ble High Court or any other Court of Law regarding the same. If and when, her presence is

required by any Court of Law for acquittal of the petitioner, she will be present there to give the required statement.”

Learned counsel for the parties are *ad idem* that the entire amount stands paid to respondent No.1.

Since the petitioner is a lady aged about 57 years and remained in judicial custody for about 02 months and 10 days during the pendency of this petition, therefore, the condition of imposing 15% of cheque amount, to be deposited in Legal Services Authority, Hisar as per the judgment of Hon'ble Supreme Court in ***“Damodar S.Prabhu versus Sayed Babalal H.;2010(5) SCC 663”*** is exempted.

In view of the same, the present petition is partly allowed. The offence under Section 138 of the Act is compounded in view of the provisions of Section 147 of the Act and the sentence awarded to the petitioner is reduced to the sentence already undergone by him.

With the aforesaid modification, the petition is disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

30.10.2018
smriti

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No