S.No.103

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR No.1697 of 2018 (O&M)
Date of Decision:08.08.2018

Yunus Masih .....**Petitioner**

Vs.

State of Punjab and another .....**Respondents**

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Ramesh Sharma, Advocate
for the petitioner.

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Rajbir Sehrawat, J.(Oral)

This is a revision petition challenging the judgment dated 17.04.2018 passed by Additional Sessions Judge, Jalandhar whereby he has upheld the judgment and order dated 17.11.2016 passed by Sub Divisional Judicial Magistrate, Nakodar convicting the present petitioner under Section 138 of Negotiable Instruments Act (for short, `the Act') for a period of one year along with fine of Rs.10,000/-.

The brief facts of this case are that the respondent No.2 had filed a criminal complaint under Section 138 of the Act read with Section 420 IPC against the present petitioner on the allegation that the petitioner had borrowed a friendly-interest-free loan of Rs.13,50,000/-; by obtaining different amounts on different dates. Out of these amounts, some of the amounts happen to be paid to the petitioner through cheques as well. So far as the cash payments to the petitioner are concerned, the complainant has averred in the complaint that he had withdrawn these amounts from his accounts on different dates and gave same to the accused-petitioner.

However, thereafter, the petitioner failed to return that amount. On persistent demands by the complainant, the petitioner paid to the complainant an amount of Rs.90,000/- as part payment of the above said due amount. For making the payment of remaining amount, a cheque bearing No.054511 dated 11.06.2014, for an amount of Rs.12,60,000/- drawn upon HDFC Bank, Nakodar was issued. The complainant presented the cheque with his banker. However, the said cheque was returned on 12.06.2014 with remarks "Account Closed". Thereafter, the complainant served a legal notice dated 18.06.2014 upon the petitioner asking him to make the payment. Despite that, the petitioner did not make the payment. That resulted into the above said complaint being filed against him under Section 138 of the Act.

After completion of the trial, the trial Court convicted and sentenced the petitioner, as mentioned above, vide his judgment and order dated 17.11.2016. Challenging that judgment and order of the trial Court, the petitioner had filed the appeal before the Additional Sessions Judge, Jalandhar. However, the lower Appellate Court also dismissed the appeal vide his judgment and order dated 17.04.2018. Hence, the present petition has been filed by the petitioner.

While arguing the case, learned counsel for the petitioner has submitted that since the complainant was only a pensioner, therefore, he had no capacity to make the payment of the alleged loan amount to the petitioner. Therefore, the complainant has failed to prove the existing legally enforceable liability against the petitioner. The second argument raised by learned counsel for the petitioner is that in total two cheques have allegedly been given to the complainant. Out of those cheques, one cheque is issued in 2011, whereas the second cheque of the same series is alleged to have been issued in the year 2014. Therefore, this itself is improbable.

Having heard learned counsel for the petitioner and perused the record, this Court does not find any substance in the argument raised by learned counsel for the petitioner.

The learned Courts below have rightly held that the complainant has duly proved legally enforceable liability against the petitioner by giving the cogent evidence. Only the fact that the complainant was a pensioner; cannot be a ground for presuming that he did not have the capacity to make the payment of Rs.13,50,000/- to the petitioner. It has come on record that some part of this amount is paid to the petitioner through the cheques. Regarding other amount, which has been paid in cash, it has been proved on record by Ex.C1 and Ex.C2, i.e. the passbook and the Bank Account Statement that the complainant had withdrawn this amount from his account on various dates. Therefore, the evidence on record categorically proves the capacity of the complainant to advance this amount. Hence, this argument of the learned counsel for the petitioner cannot be accepted. Furthermore, the petitioner himself has, admittedly, made the payment of Rs.90,000/- to the complainant without explaining as to for what purpose, this amount was paid to the complainant by him. That means the petitioner has also admitted that he had received a loan from the complainant.

The next argument of counsel for the petitioner that since cheques of same series have been issued at a gap of about three years, therefore, this makes the story of the complainant improbable, is also liable to be noticed only to be rejected. It has come on record that these cheques were duly signed by the petitioner. Therefore, it is immaterial which cheque the petitioner has issued on which date. It is upto the petitioner to manage the cheque book. Therefore, merely because the two cheques of the same series have been issued on two dates at a gap of three years, itself would not make the story of the complainant as improbable. Besides raising this argument at the presumptive level, the petitioner has not pointed out any evidence led by him; to discredit the story of the complainant qua issuance of the cheques at a gap of three years.

No other argument was raised.

In view of the above, the present revision petition is dismissed; being devoid of any merits.

August 08, 2018 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No