

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.364 of 2018 (O&M)

Date of Decision: 15.11.2018

Karambir Singh

...Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. Nakul Sharma, Advocate
for respondent no.2.

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present revision petition against judgment dated 10.01.2018 passed by learned Sessions Judge, Bhiwani, whereby his appeal against the judgment of conviction and order of sentence dated 10.01.2017 passed by Judicial Magistrate Ist Class, Bhiwani in Complaint Case No.233-2 dated 21.04.2015 under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") was dismissed.

Briefly stated, the respondent no.1-bank filed a complaint under Section 138 of the Act, as per which, the petitioner-accused had issued a cheque No.154728 dated 25.03.2015 for an amount of Rs.4,87,255/- (Ex.C2) in favour of the respondent-bank in discharge of his

liability towards availing a car loan. However, when the said cheque was presented for encashment, the same was dishonoured by the banker of the petitioner-accused with the remarks 'insufficient funds', vide memo dated 26.03.2015 (Ex.C3). Despite having been issued notice dated 30.03.2015 (Ex.C4), as provided under Section 138 of the Act, which was served upon the petitioner vide Ex.C5, when the payment was not made, the complaint in question was filed.

The trial Court while appreciating the evidence so adduced by the complainant-bank and the defence, as projected by the petitioner-accused, held the petitioner guilty and convicted him for offence under Section 138 of the Act and vide separate order, sentenced him to undergo RI for one year. Additionally, the petitioner was ordered to pay Rs.6,00,000/- to the complainant, as compensation, as provided under Section 357 CrPC apart from payment of Costs of Rs.500/-. The complainant was held entitled to recover the said amount of Rs.6,00,000/- from the petitioner-accused after the decision of appeal or revision, if any, filed by against the said order.

Aggrieved against the aforesaid orders of conviction and sentence, the petitioner-accused filed an appeal before the Appellate Court, which was dismissed vide judgment dated 10.01.2018 passed by learned Sessions Judge, Bhiwani, affirming the judgment of conviction and order of sentence passed by the trial Court.

It is in these circumstances the petitioner has filed the present revision petition against the judgments and orders passed by the Courts below.

On 26.10.2018, this Court had passed the following order:-

“Mr. Nakul Sharma, Advocate, has put in appearance on behalf of respondent No.2 and filed his memorandum of appearance in Court today, which is taken on record.

Learned counsel for the petitioner states that the petitioner will make some payment towards the awarded amount provided he is admitted on interim bail.

In view of the statement so made, sentence of the petitioner is suspended for a period of 15 days, subject to his furnishing bail bonds and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Bhiwani.

List again on 13.11.2018.”

Thereafter, on 13.11.2018, the case was adjourned for today enabling counsel for the petitioner to ascertain whether any amount had been paid to the complainant-bank, as undertook by the petitioner on 26.10.2018.

Today, when the case was taken up for hearing, a specific query was put to counsel for the petitioner as to whether any amount has been paid to the complainant bank, to which, it has been apprised that no such amount has been paid, despite there being an undertaking given on behalf of the petitioner on 26.10.2018.

The case in hand has duly been considered by the Courts below. In fact, at the request of the petitioner, a car loan for an amount of Rs.5,00,000/- was advanced to the petitioner and in discharge of his liability, the petitioner had issued cheque bearing No.154728 dated 25.03.2015 (Ex.C2) for an amount of Rs.4,87,255/- in favour of the complainant-bank drawn in account No.0354104000054001 of IDBI Bank.

However, when the said cheque was presented, the same was dishonoured

on the ground that funds in the account of the petitioner-accused were insufficient. In order to establish its case, the complainant-bank submitted affidavit of Ashish Hooda, Branch Manager (Ex.CW1/A), cheque No.154728 dated 25.03.2015 (Ex.C2), memo of IDBI Bank (Ex.C3), legal notice (Ex.C4) and postal receipt (Ex.C5). Thus, the bank succeeded in bringing its case within the parameters of the Negotiable Instruments Act.

The petitioner had availed a loan and in discharge of his liability had issued cheque, which was dishonoured. These facts have duly been proved and the Courts below have rightly convicted and sentenced the petitioner. Even otherwise, on 26.10.2018, this Court had granted an opportunity to the petitioner to make some payment of the awarded amount and counsel for the petitioner had submitted that the petitioner will make some payment of the awarded amount provided he is admitted on interim bail. Accordingly, considering the statement of counsel for the petitioner, the sentence of the petitioner was suspended for a period of 15 days. However, today counsel for the petitioner is neither in a position to state with regard to making of payment nor he has produced any document to substantiate his undertaking given before this Court.

There are concurrent findings of fact recorded by both the Courts below which are based on evidence led by the parties. Even otherwise, the scope of revisional jurisdiction is very limited. The petitioner-accused has not been able to prove that in what manner, the impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the judgment of conviction and order of sentence dated 10.01.2017 passed by learned Judicial Magistrate Ist Class, Bhiwani and the judgment dated 10.01.2018 passed by learned Sessions Judge, Bhiwani are affirmed and the present revision petition, being devoid of any merit, is dismissed.

November 15, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No