

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 945 of 2018 (O&M)

Date of Decision: 25.10.2018

Rajeev Kumar Tyagi

...Petitioner

VERSUS

M/s Jai Krishna Liquors Pvt. Ltd and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Kumar Sharma, Advocate
for the petitioner.

Mr. Varun Gupta, Advocate
for respondent no.1

Mr. Deepak Grewal, DAG, Haryana.

SURINDER GUPTA, J.

Petitioner-Rajeev Kumar Tyagi on complaint by respondent-M/s Jai Krishna Liquors Pvt. Ltd. was convicted for offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year and to pay ₹29,48,000/- as compensation.

2. Case of complainant, in brief, is that it is running a liquor vend and is engaged in trading of different type of liquor and wine etc. The complainant-company supplied liquor to the petitioner and his partners, namely, Dhanvir Singh and Bhopal Singh from time to time on credit basis. Dhanvir Singh is running a shop at Railway Station Old Faridabad and Bhopal Singh is running his shop at Sectors 22 and 23, Faridabad. A sum of ₹22,55,080/- was outstanding against the petitioner and his partners, Dhanvir and Bhopal Singh, on completion of financial year 2011-12, details

of which are as follows:-

- (i) Amount due against petitioner : ₹10,67,699;
- (ii) Amount due against Dhanvir : ₹10,32,573; and
- (iii) Amount due against Bhopal Singh : ₹1,54,808.

3. After admitting his liability the petitioner issued cheque no. 608138 dated 31.03.2012 of ₹22,55,080/-, drawn on Punjab and Sind Bank, Arya Samaj Road, Nehru Ground, NIT, Faridabad in favour of complainant, which on presentation was dishonoured vide memo dated 04.04.2012 for want of sufficient funds. Thereafter, a legal notice dated 10.04.2012 was sent to petitioner through registered post on 16.04.2012 but neither this legal notice was received back nor replied or payment of dishonoured cheque was made.

4. On the complaint, petitioner was ordered to be summoned to face trial and was served with notice of accusation as per provisions of Section 251 Cr.P.C., to which he pleaded not guilty and claimed trial.

5. In support of his case, complainant examined himself as CW-1 and closed evidence. After completion of evidence of complainant, statement of petitioner under Section 313 Cr.P.C. was recorded, wherein he denied allegations levelled against him and stated that he had given 10 blank signed cheques including the cheque in question to complainant as security. The cheque in question bears his signatures but it was not filled in by him.

6. Learned counsel for the petitioner has argued that while convicting the petitioner learned Courts below have failed to look into the statement of complainant that cheques were given to complainant as security, who had admitted that there was no document with him that petitioner is partner with Dhanvir Singh and Bhopal Singh or has ever

represented them to be his partners. Security cheques given to complainant against delivery of liquor were wrongly utilized towards payment of amount due towards Dhanvir Singh and Bhopal Singh as well. Courts below have not looked into this fact that amount mentioned in the cheque was not due towards petitioner even at the time of presentation of cheque before the bank, as such, very requirement to make out the offence punishable under Section 138 of the Negotiable Instruments Act is missing. The petitioner was not partner with Dhanvir Singh and Bhopal Singh, as such, was not liable to pay the amount as outstanding against them. Learned trial Court has misinterpreted the plea of petitioner about the cheque in question, which was given as security cheque under the impression that at the time of giving of the cheque, amount of ₹22,55,080/- was due against the petitioner. The observations of learned trial Court in this regard are not sustainable. Learned trial Court has totally ignored the plea of petitioner that he was not partner with Dhanvir Singh and Bhopal Singh, as such, there was no question of issuing the cheque for their liability. Learned Appellate Court while looking into this aspect has observed that partnership can be oral and has drawn inference from the fact that earlier the payment on account of Dhanvir Singh and Bhopal Singh was being made by the petitioner. Thus vicarious liability has been fastened on the person, who was incharge and responsible to the company for the conduct of its business. The above observation of Appellate Court are beyond the evidence on record as complainant in his notice has nowhere taken the plea that amount of ₹22,55,080/- was outstanding towards partnership firm and he has categorically stated that he is not aware about any partnership between the petitioner, Dhanvir and Bhopal Singh. The mere fact that payment of

Dhanvir and Bhopal Singh was made through cheques from the account of petitioner is no reason to draw inference of partnership between them. The Appellate Court has also gone wrong while endorsing the view taken by learned trial Court that the security cheques can be encashed when drawer failed to discharge the liability qua amount mentioned in the cheque. The case of petitioner is that he had given the blank cheques to complainant, as such, observations in authorities cited by learned trial Court and Appellate Court are not applicable to facts of the case.

7. Learned counsel for the complainant has argued that petitioner has admitted his signatures on the cheque. It is proved on record that earlier payments of amount due towards Dhanvir Singh and Bhopal Singh were being made from the account of petitioner. This gives reason for the complainant to believe that Dhanvir Singh and Bhopal Singh were partners of petitioner. Even if the cheque in question be admitted to have been given as security it was acknowledgment of liability on the part of drawer of the cheque. In support of his contention he has relied on observations in case of **Shalini Enterprise vs. Indiabulls Financial Services Limited, 2013 (2) RCR (Criminal) 798 (P&H)**. He has further argued that once the signatures on the cheque are admitted, petitioner cannot escape his liability under Section 138 of the Negotiable Instruments Act even if the amount, date and other particulars are filled up by some other person. In support of his contention he has relied on observations in case of **Gurmeet Singh vs. State of Haryana and another, 2012 (2) RCR (Criminal) 306 (P&H)**.

8. The first question, which arises for consideration, is as to whether the cheque in question was issued for payment of legally enforceable debt outstanding towards petitioner. Admittedly, the amount

mentioned in the cheque was not due solely towards the petitioner. As per break up in the complaint given by complainant-respondent a sum of ₹10,67,699/- was outstanding against the petitioner while a sum of ₹10,32,573/- and ₹1,54,808/- was outstanding against Dhanvir Singh and Bhopal Singh respectively at the closure of financial year 2011-12. The complainant has imputed the liability of petitioner to pay the amount due towards Dhanvir Singh and Bhopal Singh with a plea that they were partners of petitioner. As per statutory notice issued before filing of complaint, entire liquor was supplied to petitioner and he had issued the cheque for ₹22,55,080/- a sum outstanding against him as on 31.03.2012. Paras 3 and 4 of legal notice (Ex. C-4) reads as follows:-

“3. That as per your requirement my client supplied you the liquor from time to time on credit basis. You made some payments during the financial year 2011-2012. As per the statement of account of my client an amount of ₹22,55,080/- is outstanding against you upto 31.03.2012.

4. That after admitting your liability to make the payment of ₹22,55,080/- you issued an account payee cheque no.608138 dated 31.03.2012 for ₹22,55,080/- drawn on Punjab and Sind Bank, Arya Samaj Road, Nehru Ground, NIT Faridabad in favour of my client from your account no.53371 with the assurance that the said cheque will be encashed on its presentation.”

9. In complaint and in his affidavit (Ex. CW-1/A), complainant has stated that legal notice served by him was never replied. However, when

the petitioner appeared as his own witness, he was confronted with reply (Mark 'X') to notice sent by him, which he denied. It is, however, not a disputed fact anymore that notice of complainant was duly replied and this fact has been admitted by the petitioner in his statement recorded under Section 313 Cr.P.C. and also in grounds of revision. In reply to the notice, the petitioner alleged that he had made complete and full payment of the amount outstanding against him and had never admitted liability to make the payment of ₹22,55,080/- or had issued cheque no. 608138 dated 31.03.2012. He took the plea that this cheque was given in the very beginning as security cheque.

10. Though, contradictory pleas have been taken with regard to the reply to notice issued by the petitioner before filing of the complaint but this fact is admitted that legal notice sent by complainant was replied and no other reply except Mark 'X' has come on record. With grounds of revision, learned counsel for the petitioner has placed on file the reply to notice sent by the complainant as Annexure P-3, which is the same that has been placed as Mark 'X' on record of trial Court. From the recital in the reply, it is apparent that petitioner had been admitting his partnership with Dhanvir Singh and Bhopal Singh. To make out this fact reference can be made to paras 4 and 8 of the notice, which reads as follows:-

“4. That there were three partners of your (sic my) client and other two partners have not paid/cleared their shares of amount/money, so to pressurize my client, this false and manipulated notice has been sent to my client.

5 to 7 xx xx xx xx xx

8. That instead of receiving his payments from other

partners, your client has chosen to pressurize and harass my client which is unlawful, wrong and extorting tactics, which is illegal, malafide, deceitful and criminally intended.”

11. In the concluding para of the reply, complainant was asked to take back notice and to “take action against two other partners and not to pressurize the petitioner.” The recital in the reply is sufficient to demolish the plea raised by learned counsel for the petitioner that partnership with Dhanvir Singh and Bhopal Singh is not proved on record. In view of admission by petitioner of his partnership with Dhanvir and Bhopal Singh, complainant was not required to produce any evidence to prove it. In addition to admission by petitioner, learned Appellate Court has taken note of the fact that even earlier the payments due in account of Dhanvir Singh and Bhopal Singh were made from the account of petitioner. This further indicates that petitioner had been representing Dhanvir Singh and Bhopal Singh as his partners. The observations of learned Appellate Court in para 13 of the judgment to this effect are reproduced as follows:-

“13. Ex. C2 is the disputed cheque dated 31.3.2012 for an amount of ₹22,55,080/-, which was issued by the accused. For proving the liability of accused qua himself and qua his alleged partners, reliance was placed by complainant on Ex. C6, Ex. C7 and Ex. C8 (copies of statement of subsidiary ledger) for proving that accused had issued numerous cheques for payment outstanding qua Dhanvir Singh and Bhopal Singh and all these cheques were cleared from the account of accused only.

*It was argued by learned counsel for accused that ledger statement was not admissible in evidence in absence of certificate under section 65-B of Indian Evidence Act. However, a perusal of the cross-examination of CWI proves that it was himself suggested by defence to this witness that the cheques bearing no. 138556, 138557, 138559, 138562, 138564, 138573 and 138583 were cleared from the bank account of accused and these were qua payment of accused. Cheque bearing no.138560, 138563, 138566, 138569, 138570, 138574, 138581 and 138588 were qua payment of Dhanvir Singh and cheques bearing no.138558, 138561, 138565, 138568, 138572, 138573, 138575, 138579, 138580, 138577, 138578 were qua payment of Bhopal Singh. All these cheques were cleared from the account of accused. These suggestions were admitted by accused and such testimony shows that accused was making payment of the amount outstanding qua himself, Dhanvir Singh and Bhopal Singh and that the cheques of same series continuous in number were being used for making payment of all three. It is general practice amongst liquor vendors to work in oral partnership. A partnership can be oral as well. In **Mettupalayam Industrial Roadways Pvt Ltd v Thiru Mohamed Ismail Rowther, 1975 SCC Online Mad 257**, it was held that:-*

“It is well-established that an agreement to the

contrary contemplated by section 42 of The Partnership Act need not be in writing but can also be oral. It is equally well-established that such an agreement need not be express but can be implied from the conduct of the surviving partners in carrying out the partnership activities”.

In Dwarakadas and Co. v. Income-tax Commissioner:(1975) 1 SCC 55, a Division Bench of the Hon’ble Bombay High Court had expressed the view thus:

“What is overlooked is that the law does not require that a partnership deed should be in writing. The agreement of partnership may be oral and the oral partnership agreement is as effective as a written partnership agreement.”

12. From the facts discussed above, I am of the considered opinion that Courts below have committed no wrong while accepting the contention of complainant that petitioner was liable to pay amount due against him, Dhavir Singh and Bhopal Singh and the amount of ₹22,55,080/- was outstanding against him at the closure of financial year 2011-2012.

13. The other plea of petitioner is that the cheque in question was given as security cheque and has been misused by the complainant. In this regard, the petitioner had taken plea in the reply as follows:-

“3.My client had given your client one cheque in the very beginning as security blank cheque, which has been misused by your client. That was an

undated and un-amounted cheque. My client had never assured your client about the encashment of the cheque.”

14. While appearing as DW-1, the petitioner has stated that in the year 2011-2012, he had again given blank signed cheques to complainant. In his cross-examination, he has denied his acquaintance with Dhanvir Singh and Bhopal Singh and their working with him. However, he has admitted that son of Bhopal Singh was employed with him, who had also filed a complaint against him. The complainant while appearing as CW-1 has admitted that petitioner during the period from 01.04.2011 to 31.03.2012 had given cheques of this series out of which one was a security cheque. Here a question, which arises for consideration is as to whether from this statement of complainant it be presumed that cheque in question was given as a security cheque? The petitioner has not come up with any evidence to show that cheque no. 608138 dated 31.03.2012 was given by him in the year 2010-2011 as security cheque. Learned counsel for the petitioner has not pointed out any evidence to show that cheques of this series were encashed or presented before the bank in the year 2010-2011. Even in the suggestion given to complainant no other cheque of the series 60813----, except cheque in question, was suggested to have been presented to bank or cleared during the year 2010-2011 or in the year 2011-2012. Though, learned counsel for the complainant has tried to make out that even a cheque given as security can be presented and used for the payment outstanding at the time of issuance of cheque but this argument is not required to be discussed in detail as from the evidence on record, it is not proved that cheque in question was given as security cheque.

15. During course of arguments learned counsel for the petitioner has relied on observations in cases of **Baiju G. Nath, Laiju Nivas vs. Girija Krishnakumar, 2011 (18) RCR (Criminal) 429, Manishbhai Bharatbhai Shah vs. The State of Gujarat, 2008 (1) GLR 392** and **Balbir Singh vs. Raj Krishan, 2015 (2) RCR (Criminal) 812.**

16. Observations in above referred citations are of no help to petitioner in this revision, firstly because amount as mentioned in the cheque is proved to be due against the petitioner and his partners; secondly, it is proved that cheque was issued for legally enforceable liability towards the petitioner; and thirdly, the petitioner has failed to prove that the cheque in question was given as blank security cheque.

17. As a sequel of my above discussion, I find no merit in this revision and the same is dismissed.

October 25, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No