

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 2406 of 2012 (O&M)
Date of Decision: 19.12.2019

Rajinderpal and another

.....Petitioners

Versus

Gurnam Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Petitioner No. 1 in person with
Mr. Manish Singla, Advocate for
Mr. Naresh Jain, Advocate.

Petitioner No. 2 has already been acquitted
vide order dated 31.10.2019

Respondent in person with
Mr. H.S.Aujla, Advocate.

Mr. M.S.Nagra, AAG, Punjab.

HARNARESH SINGH GILL, J.

This is a revision petition challenging the judgment dated 18.07.2012 passed by the learned Additional Sessions Judge, Ludhiana, whereby the appeal filed by the present petitioners was dismissed and judgment of conviction and order of sentence dated 03.02.2011 passed by the learned Judicial Magistrate Ist Class, Ludhiana, convicting the petitioners under Section 138 of the Negotiable Instruments Act (for brevity, 'Act') and sentencing them to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5000/- each, and in default of payment fine, to further undergo rigorous imprisonment for a period of one month, has been upheld.

During the pendency of present petition, petitioner No.2-Satpal

Singh and the respondent had entered into a compromise and as per the compromise, petitioner No. 2 had paid Rs. 75,000/- to the respondent.

Since petitioner No. 2 and the respondent had compromised the matter, therefore, permission for compounding the offence under Section 138 of the N.I. Act was granted by this Court on 31.10.2019. The offence was allowed to be compounded and the judgments and order passed by the Courts below were set aside qua petitioner No. 2 and he was acquitted of the charge framed against him.

On the same date i.e. 31.10.2019 petitioner No. 1-Rajinderpal prayed for time to settle the matter with the respondent amicably.

On 10.12.2019, petitioner No. 1 came present and stated that he was not ready for amicable settlement.

In the present case, the petitioner No. 1-accused had availed loan from the complainant and agreed to repay the same. In order to discharge his liability, the accused had issued cheque No. 170435 dated 16.2.2005 for a sum of Rs. 2,45,000/-. The respondent presented the above mentioned cheque for encashment but the same was returned unpaid to him with the remarks “not arranged for”. Thereafter a legal notice dated 8.8.2005 was sent to the accused, but they had also failed to pay the sum of Rs. 2,45,000/-. Accordingly, the complaint in question was filed by the respondent in which the petitioners were convicted and sentenced under Section 138 of the Act.

Even the Appellate Court after considering the assertions raised by the petitioners, dismissed the appeal. Since the respondent had been successful in proving its case, the trial Court had rightly ordered the conviction of petitioner No. 1 which was rightly upheld by the Appellate

It is settled law that once the signature in the cheque is admitted by the accused/drawer, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. Such presumption, though is rebuttable, but in the instant case, both the Courts below have rightly recorded that the accused-petitioner had failed to rebut such presumption.

In view of the above, the judgment of conviction and order of sentence dated 3.2.2011 under Section 138 of the N.I.Act passed by learned Judicial Magistrate Ist Class, Ludhiana and the judgment dated 18.7.2012 passed by learned Additional Sessions Judge, Ludhiana are upheld qua petitioner No. 1-Rajinderpal.

Petitioner No. 1-Rajinderpal is on bail. He is directed to surrender before the Court of Chief Judicial Magistrate concerned within 15 days from the date of passing of this order to undergo remaining part of sentence. Copy of this order be sent to the Courts below.

The petition stands disposed of accordingly.

(HARNARESH SINGH GILL)
JUDGE

December 19, 2019
Gurpreet

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