

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-3569-2017 (O&M)
Date of Decision:- 27.03.2019

Ravinder Singh

... Petitioner

Versus

The Punjab Agro Foodgrains Corporation Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. J.S. Bedi, Senior Advocate with
Mr. Lovekirat Singh Chahal, Advocate for the petitioner.

Mr. Anupam Singhla, Advocate for respondent No.1.

Mr. Randhir Singh Thind, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner Ravinder Singh assails judgment dated 15.9.2017 passed by learned Additional Sessions Judge, Ludhiana, whereby his appeal challenging judgment dated 19.11.2013 passed by learned Judicial Magistrate 1st Class, Ludhiana holding him guilty for offence under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to as “*the Act*”) has been dismissed and his conviction for offence under Section 138 of the Act, has been upheld.
2. A few facts, necessary to notice, are that the Department of Food and Civil Supplies, Government of Punjab had appointed ‘M/s Jai Guru Dev Gram

Udyog Samiti' for the purpose of procuring paddy on behalf of the 'Food Corporation of India' and for custom milling the same through sheller. The petitioner Ravinder Singh being Secretary and Bhupinder Kaur being Chairman of 'M/s Jai Guru Dev Gram Udyog Samiti' were stated to be the persons responsible for carrying day-to-day functioning of the sheller. During the year 2000-01, the complainant had entrusted 8155.175 metric tonnes of paddy for custom milling against which 5219 metric tonnes of rice was to be delivered by accused 'Food Corporation of India' on behalf of the complainant. However, the complainant alleged that the accused failed to deliver the due rice and that 4478.809 metric tonnes of paddy was left with the accused and the complainant in order to save the paddy from deterioration decided to deliver the aforesaid stock to highest bidder i.e. 'M/s Hardial Singh and Sons', who were asked to lift the paddy from the premises of the accused but only 1727 metric tonnes paddy could be lifted as there was no other stock left with the accused in their premises. It is thus alleged that the accused had committed breach of trust by misappropriating the stock of paddy entrusted to them and nor having delivered the custom milled rice to 'Food Corporation of India'.

3. It is the case of the complainant that the accused, while acknowledging that an amount of ₹3,96,00,000/- was due to be paid by the accused, had issued three cheques one of them being cheque bearing No.0023907 dated 18.3.2005 for an amount of ₹1,00,00,000/- but the same upon presentation was dishonoured and returned back to the complainant vide memo dated 30.3.2005 with the remarks 'insufficient funds'. The cheques in question were received by the complainant through his banker on 3.4.2005. The complainant issued registered notice dated 29.4.2005 calling upon the

accused to make good the payment, but the same not having been made, the complainant filed a complaint under Section 138 of the Act.

4. The petitioner was summoned and notice of accusation was served upon him. The complainant in order to establish his case examined Sh. N.K. Sharma, District Manager, Punjab Agro Foodgrains Corporation Ltd. as CW-1 and also led documentary evidence. The learned trial Court, upon considering the evidence on record and after considering the submissions raised before it, held the petitioner guilty for having committed offence punishable under Section 138 of the Act and sentenced him to undergo simple imprisonment for 2 years and also to pay fine amounting to ₹2,000/- vide judgment dated 19.11.2013 passed by learned Judicial Magistrate 1st Class, Ludhiana. The appeal filed by the petitioner before the Court of Sessions was dismissed vide judgment dated 15.9.2017, which has been assailed by way of filing the present revision petition.
5. The learned counsel for the petitioner has submitted that the learned trial Court fell in error in holding that the cheque in question had been issued in discharge of a legally enforceable liability against the petitioner, whereas infact the same had been issued merely as a security cheque and was infact an undated cheque. The learned counsel has further submitted that, in any case, the present case is a case of settlement of accounts and at best the petitioner could be saddled with civil liability and since the complainant has already approached the Arbitrator to seek recovery of the amount qua the alleged shortfall of paddy, therefore, the present proceedings under Section 138 of the Act are absolute misuse of process of law.

6. I have considered the aforesaid submissions and have also perused the record of the case.
7. At the outset, it needs to be noticed that in the present case neither it is the case of the petitioner that he had not been entrusted with the paddy nor is it his case that the cheque in question does not bear his signatures. The complainant has led ample evidence to establish that the accused had been entrusted that 8155.175 metric tonnes of paddy for custom milling against which he was supposed to deliver 5219 metric tonnes of rice to 'Food Corporation of India' but the accused did not deliver the said quantity of rice. It is further borne out that subsequently the complainant in an attempt to save its paddy tried to get the remnant paddy weighing 4478.809 metric tonnes lifted from the premises of the accused and to entrust the same to 'M/s Hardial Singh and Sons' but paddy only to the extent of 1727 metric tonnes could be lifted as there was no other stock with the accused.
8. The cheque in question had been issued by the accused in discharge of a part of his legal liability, the total being ₹3,96,00,000/- but the same having been dishonoured, the accused had rendered himself liable for having committed offence punishable under Section 138 of the Act. The trial Court has meticulously marshaled the evidence brought on record and there is no misreading of the same so as to justify any interference in the findings recorded by the trial Court and as upheld by the Appellate Court. Consequently, the conviction of the petitioner for offence under Section 138 of the Act is upheld.
9. As regards the quantum of sentence of imprisonment, the learned counsel has vehemently argued that the sentence of imprisonment as imposed by the

trial Court i.e. simple imprisonment for two years is the maximum sentence that could be imposed and that since the petitioner is aged about 56 years and afflicted with several ailments, he thus deserves leniency in the matter of sentence. It has further been submitted that, in any case, the sentence of imprisonment as imposed in the present case may be ordered to run concurrently with the sentence of imprisonment imposed in two other complaints u/s 138 of Negotiable Instruments Act, arising out of the same transaction, wherein also the petitioner has been sentenced to undergo simple imprisonment for two years in each of the case.

10. I have considered the aforesaid submissions regarding propriety of sentence.
11. It is no doubt correct that the maximum sentence of imprisonment which can be imposed in respect of offence under Section 138 of the Act is two years, as has been imposed in the present case, but it is well settled that the discretion in the quantum of sentence of imprisonment has to be exercised by the Courts keeping in view the gravity of the offence. In other words, the sentence should appear to be commensurate with the nature and manner in which the offence has been committed. In view of the fact that the cheque in question is for a phenomenal amount of ₹1,00,00,000/-, there is hardly any room for showing any leniency in the matter. However, keeping in view the fact that the petitioner is not stated to be a previous convict, the substantive sentence of imprisonment as imposed upon the petitioner is reduced from simple imprisonment for 2 years to simple imprisonment for 1 year and 6 months.
12. As far as the prayer of the petitioner for ordering the sentence of imprisonment to run concurrently with sentences imposed in the other two

cases i.e. in Complaint No.238/2 dated 6.10.2005 and Complaint No. 954 dated 23.4.2005, the learned counsel for the petitioner has submitted that since all the three cheques had been issued in discharge of a liability arising out of one and the same transaction, therefore the sentences should be made to run concurrently notwithstanding that separate complaints had been filed. The learned counsel, in order to hammer forth his aforesaid submission, presses into service a judgment of Hon'ble the Supreme Court reported as 2016(4) R.C.R. (Criminal) 790 titled as Shyam Pal Versus Dayawati Besoya and another.

13. I have considered the aforesaid submission and have also gone through the cited judgment. The cited judgment was passed while relying upon two earlier judgments rendered by Hon'ble the Supreme Court in V.K. Bansal Versus State of Haryana, 2013(3) R.C.R. (Civil) 1052 and in Benson Versus State of Kerala, 2016(4) R.C.R. (Criminal) 602. Hon'ble the Supreme Court, while discussing the V.K. Bansal's case (supra) held as follows:-

“ 13. It was underlined that there is no cut and dried formula for the Court to follow, in the exercise of such power and that the justifiability or otherwise of the same, would depend on the nature of the offence or offences committed and the attendant fact and circumstances. It was however postulated that the legal position favours the exercise of the discretion to the benefit of the prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints in relation thereto might have been filed.

14. The imperative essentiality of a single transaction as the decisive factor to enable the Court to direct the subsequent sentence to run concurrently with the previous one was thus underscored.

It was expounded as well that the direction for concurrent running of sentence would be limited to the substantive sentence alone.”

14. Further, while referring to Benson’s case (supra) it was held as follows:-

“ The benefit of the discretion was accorded to the appellant therein referring as well to the observation in V.K. Bansal (supra) that it is difficult to lay down any straight jacket approach in the matter and that a direction that the subsequent sentence would run concurrently or not, would essentially depend on the nature of the offence or offences and the overall fact situation. Understandably, the appellant was required to serve the default sentence as awarded with the direction that if the fine imposed had not been deposited, the default sentence or sentences would run consecutively.”

15. In the present case, it certainly cannot be disputed that all the three cheques, for dishonour of which three complaints were filed, had infact been issued for discharge of the liability of ₹3,96,00,000/- arising out of the same transaction. The relevant details pertaining to the said cheques, complaints and judgments passed by the lower Courts are stated as follows:-

Cheque number and date	Amount of Cheque (in ₹)	Complaint No.	Date of judgment passed by JMIC	Date of judgment passed by ASJ	Criminal Revision No. (High Court)
0023908/ 21.4.2005	1,50,00,000/-	954 dated 23.4.2005	19.11.2013	15.9.2017 (Cr.A. No.45 of 6.12.2013)	CRR-3577-2017
0023909/ 21.6.2005	1,46,00,000/-	238/2 dated 6.10.2005	8.11.2013	15.9.2017 (Cr.A. No.46 of 6.12.2013)	CRR-3571-2017
0023907/ 18.03.2005	1,00,00,000/-	86/2 dated 14.6.2005	19.11.2013	15.9.2017 (Cr.A. No.47 of 6.12.2013)	CRR-3569-2017

16. The cheques having been issued for discharge of a liability arising out of the same transaction, the petitioner can certainly be extended the benefit of

concurrency of sentence of imprisonment, keeping in view the ratio of judgment of Hon'ble the Apex Court rendered in Shyam Pal's case (supra). As such, it is ordered that the substantive sentence of imprisonment, in the present case, shall run concurrently with the sentence imposed in the other two complaints i.e. in complaint No.238/2 dated 6.10.2005 pertaining to dishonour of a cheque bearing No.0023909 dated 31.6.2005 for an amount of ₹1,46,00,000/- and complaint No.954 dated 23.4.2005 pertaining to dishonour of a cheque bearing No.0023908 dated 21.04.2005 for an amount of ₹1,50,00,000/-. However, the fine as imposed upon the petitioner is enhanced from ₹2,000/- to ₹25,00,000/-, keeping in view the amount of the dishonoured cheque, which is ₹1,00,00,000/-. The fine so recovered shall be paid as compensation to the complainant. It will not be out of place to mention that in Shyam Pal's case (supra), a fine of ₹6,50,000/- in each of the two cases had been imposed, although the cheque in each of the case was for an amount of ₹5,00,000/-. In these circumstances, the fine of ₹25,00,000/-, to be paid as compensation to complainant upon realisation, which is infact much lesser than the cheque amount, is being imposed, while also bearing in mind that that the sentences in all the three cases are being reduced and being ordered to run concurrently.

17. Thus, while reducing the sentence to simple imprisonment for one year and six months and while ordering the sentence of imprisonment to run concurrently in respect of all the three complaints, the petitioner is being imposed fine amounting to Rs.25,00,000/- as indicated above. The fine so recovered shall be paid as compensation to the complainant. In case of non-payment of fine, the petitioner shall further undergo imprisonment for 4

months. It is clarified that in case of non-payment of fine, the default imprisonment of 4 months in lieu thereof will run consecutively in respect of each of the three cases.

18. The revision petition is dismissed except for the modification in sentence as indicated above.

29.03.2019
pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No