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

CRR-3577-2017 (O&M)
Date of Decision:- 29.03.2019

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.

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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 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

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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 to '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.0023908 dated 21.4.2005 for an amount of ₹1,50,00,000/- but the same upon presentation was dishonoured and returned back to the complainant vide memo dated 12.5.2005 with the remarks 'insufficient funds'. The cheques in question were received by the complainant through his banker on 16.5.2005. The complainant issued registered notice dated 7.6.2005 calling upon the

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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.

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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.

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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, since all the three cheques had been issued in discharge of a liability arising out of one and the same transaction, wherein also the petitioner has been sentenced to undergo simple imprisonment for two years in each of the case. The learned counsel, in order to hammer forth his aforesaid submission, pressed 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.*

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 ₹1,50,00,000/-, there is hardly any room for showing any leniency in the matter.

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12. 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. The fine as imposed upon the petitioner is, however, enhanced from ₹2,000/- to ₹25,00,000/-, keeping in view the amount of the dishonoured cheque, which is ₹1,50,00,000/- and also in view of the fact that the sentences of imprisonment in respect of the other two complaints u/s 138 of Negotiable Instruments Act, are also being ordered to run concurrently with sentence of this case, vide separate judgments of even date being passed in two other revision petitions arising out of the said complaints. 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 made concurrent.

13. The details of the other two cases, wherein sentences are being ordered to run concurrently with sentence of this case are 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)**
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

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14. Thus, while reducing the sentence to simple imprisonment for one year and six months, the petitioner is being imposed fine amounting to Rs.25,00,000/- while bearing in mind that the sentences of imprisonment as imposed in two other complaints are being reduced and being ordered to run concurrently with sentence imposed in this case, vide separate judgments of even date. 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 the default imprisonment for 4 months in case of non-payment of fine, will run consecutively in respect of each of the three cases.

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

29.03.2019 **(Gurvinder Singh Gill)**
pankaj **Judge**

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

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