

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1533 of 2019 (O&M)
Date of Decision: 30.08.2019

Balbir

.....Petitioner

Vs.

Punjab National Bank and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. G.S. Duhan, Advocate, for the petitioner.

None for respondents no. 1.

Mr. Surender Singh, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

On 04.07.2019, the following order had been passed:-

“Learned counsel for the petitioner points to Annexure P-2 which is shown to be the statement of the Branch Manager of Punjab National Bank, Village Nauch, District Kaithal, stating to the effect that as a matter of fact no amount is due from the petitioner, with a 'no dues certificate' annexed along with that statement.

The said statement is stated to have been made before the concerned Magistrate despite which the petitioner was remanded to judicial custody on 3.6.2019 till 17.6.2019, after which he is stated to have been again retained in judicial custody.

Notice of motion in the applications seeking condonation of delay and suspension of sentence, as also in the petition itself, returnable on 23.7.2019.

In the meanwhile, in the aforesaid circumstances, with the petitioner stated to have cleared the entire loan in

respect of which cheques obviously bounced leading to filing of a complaint under Section 138 of the Negotiable Instruments Act, 1881, sentence of the petitioner shall remain suspended till the next date of hearing, upon him furnishing bail and surety bonds in the amount of Rs.100/- each.”

Thereafter, with the Bar abstaining from work on 02.08.2018, and the next date of hearing at that stage being 28.08.2019, the following order was passed on that date:-

“Pursuant to notice of motion having been issued on 04.07.2019, at that stage returnable on 23.07.2019, the report of the Registry is to the effect that it has been served upon respondent no. 1.

However, since it is slightly past 04:00 p.m., it is not known whether the first respondent wishes to contest the petition or refute the contention recorded by this Court, of learned counsel for the petitioner on 04.07.2019.

Adjourned to 30.08.2019.

To be shown in the urgent motion list.

Interim order to continue till the next date of hearing.”

Today again, despite the case having been called out twice, once in the pre-lunch session and once in the post-lunch session, none is present for respondent no. 1, i.e. the Punjab National Bank.

Obviously, it would imply that the Bank is not refuting the fact that the petitioner has in fact paid back his entire loan.

Learned counsel for the petitioner further points to the statement of Sh. Anil Kumar, Branch Manager, Punjab National Bank, Village Nauch, District Kaithal (copy Annexure P-2), as is stated to have been made before the learned Judicial Magistrate Ist Class, Kaithal, on 03.06.2019.

The detailed order passed by the JMIC on the same date is also on record (copy Annexure P-1), to the aforesaid effect.

However, despite noticing the statement made by the Branch Manager, including the fact that he had no objection if the petitioner were released by the Court, with the 'no dues certificate' issued by the Bank also having been admitted by the Branch Manager, simply because the petitioner was not present in Court on that date, he was ordered to be sent to judicial custody for further proceedings.

The petitioner was thereafter released on bail only after he approached this Court by the present petition and the order dated 04.07.2019 was passed.

The complainant instituted by the first respondent herein was one invoking the provisions of Section 138 of the Negotiable Instruments Act, with the petitioner having been convicted by the trial Court for the commission of such offence and sentenced to one years' rigorous imprisonment, with, in addition, Rs. 26,000/- to be paid to the complainant. The appeal thereafter filed, was dismissed by the appellate Court, for non-prosecution, on 10.01.2019. However, the matter obviously having been settled, in terms of the statement made by the complainant before the JMIC on 03.06.2019, the conviction of the petitioner by the trial Court and the sentence imposed upon him, are set aside.

The order of the JMIC dated 03.06.2019 (copy Annexure P-1), directing the petitioner to be remanded to the judicial custody is also set aside, which order should not have been actually passed, once the matter had been fully settled between the parties.

August 30, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes