

CRR-753 of 2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-753 of 2018 (O&M)
Date of Decision: 29.03.2019

Tilak Parkash Kataria
.....Petitioner

Versus

Archana Kumar
.....Respondent

CRR-766 of 2018 (O&M)

Tilak Parkash Kataria
.....Petitioner

Versus

Archana Kumar
.....Respondent

CRR-768 of 2018 (O&M)

Tilak Parkash Kataria
.....Petitioner

Versus

Archana Kumar
.....Respondent

CRR-770 of 2018 (O&M)

Tilak Parkash Kataria
.....Petitioner

Versus

Archana Kumar
.....Respondent

CRR-772 of 2018 (O&M)

Tilak Parkash Kataria
.....Petitioner

Versus

Archana Kumar
.....Respondent

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CRR-773 of 2018 (O&M)

Tilak Parkash Kataria

....Petitioner

Versus

Archana Kumar

....Respondent

CRR-775 of 2018 (O&M)

Tilak Parkash Kataria

....Petitioner

Versus

Archana Kumar

....Respondent

CRR-784 of 2018 (O&M)

Tilak Parkash Kataria

....Petitioner

Versus

Archana Kumar

....Respondent

CRR-785 of 2018 (O&M)

Tilak Parkash Kataria

....Petitioner

Versus

Archana Kumar

....Respondent

CRR-786 of 2018 (O&M)

Tilak Parkash Kataria

....Petitioner

Versus

Archana Kumar

....Respondent

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CRR-787 of 2018 (O&M)

Tilak Parkash Kataria

....Petitioner

Versus

Archana Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Sunil Chadha, Sr. Advocate,
with Mr. Saurav Kanojia, Advocate,
for the petitioner.

Mr. Shubham Bhalla, Advocate,
for the respondent.

RAMENDRA JAIN, J. (ORAL)

By this common judgment, I shall dispose of above-titled eleven revision petitions arising out of eleven separate judgments of the Appellate Court of even date i.e. 09.02.2018, dismissing appeals of the petitioner, thereby affirming the judgments of conviction of the trial Court dated 15.10.2016, whereby petitioner was held guilty under Section 138 of the Negotiable Instruments Act, 1881 (in short the 'Act') and sentenced to undergo rigorous imprisonment for two years along with separate compensations equivalent to the cheque amount in eleven complaints of the respondent.

Briefly, in eleven complaints under Section 138 of the Act of the respondent, petitioner, after holding trial, was convicted and sentenced vide aforesaid judgment and order dated 15.10.2016, in the manner as narrated above.

Being aggrieved, petitioner approached the Appellate Court, but

remained unsuccessful as his all eleven appeals too were dismissed vide

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judgments dated 09.02.2018.

Learned counsel for the petitioner *inter alia* contends that both the Courts below have failed to appreciate that allegations of the respondent in all the impugned complaints against the petitioner were contrary to her deposition as CW1, because as per complaints, petitioner issued eleven cheques to the respondent for ₹99,50,000/- in lieu of money received as sale consideration after selling her property, whereas according to her affidavit Ex.CW1/A, she had given friendly loan to the petitioner, besides making investment in the property on her behalf. According to bank statement Ex.C7 produced by respondent-complainant only a sum of ₹5,00,000/- was transferred to the account of the petitioner, out of which ₹4,20,000/- was returned. Therefore, story putforth by respondent-complainant that she had advanced friendly loan and handed over money to the petitioner to purchase property was false. Alleged transaction, if any, in between the parties was of civil nature. Respondent-complainant never filed any civil suit. Lastly, learned counsel prays for concurrency of sentence of the petitioner. In support of his contentions, learned counsel placed reliance upon ***Vijay v. Laxman and another***, 2013(1) R.C.R.(Civil) 980 (S.C.), ***Krishna Janardhan Bhat v. Dattatraya G. Hegde***, 2008(1) R.C.R.(Criminal) 695 (S.C.), ***M.S. Narayana Menon @ Mani v. State of Kerala and another***, 2006(3) R.C.R.(Criminal) 504 (S.C.), ***State of Punjab v. Madan Lal***, 2009 (2) R.C.R.(Criminal) 602 (S.C.), ***Ram Lal v. Narayan Dass and another***, 2016(2) R.C.R.(Criminal) 131 (P&H), ***Tirath Singh v. Happy Singh***, 2017 (1) L.A.R. 634 (P&H), ***Satish Chander Chauhan v. State of Haryana and another***, 2017(1) L.A.R. 577 (P&H), ***M/s J.B. Industries v. Punjab Agro***

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(P&H) and **Madan Singh v. State of Rajasthan through P.P.**, 2017(2) NIJ 554 (Raj.).

On the other hand, learned counsel for the respondent-complainant, refuting above submissions, pleading the legality and validity of the impugned judgments of both the Courts below, contends that it is highly unbelievable that a property dealer would issue cheques to his client as a security to sell his property. Such type of practice is unknown to the world. Petitioner tried to blow hot and cold in the same stream at different stages, during trial, but did not lead any evidence in his defence either to rebut the evidence led by the respondent-complainant or to corroborate his own stand. Since, petitioner has committed offence for five distinct transactions, therefore, his sentence cannot be made concurrent. In support of his contentions, learned counsel placed reliance on **V.K. Bansal v. State of Haryana and others**, 2013(3) R.C.R.(Civil) 1052 (S.C.).

Having given thoughtful consideration to the rival submissions, this Court finds the instant revisions completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in these revisions.

This Court, while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such infirmities in the judgments of both the Courts below.

Petitioner, during trial or even in his statement under Section 313

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Cr.P.C. never disputed his signatures on all eleven cheques in question and that the same do not pertain to his bank account. Therefore, both the Courts below have rightly accepted all the eleven complaints of respondent-complainant, drawing presumption under Section 139 of the Act in her favour.

Respondent-complainant had produced bank statement only to prove her fiduciary relationship with the petitioner and his wife and not for any other purpose to show that she had also deposited some amount in the bank account of wife of the petitioner. Respondent-complainant successfully proved her case independently in exclusion to above bank statement by leading cogent and convincing evidence. Thus, she has rightly and legally been believed by both the Courts below.

Even otherwise, bank statement Ex.C7 relates to insignificant aspect of the case, when the petitioner could not/did not rebut stand of the respondent-complainant that eleven cheques for ₹99,50,000/- were issued by petitioner to her in discharge of his legal liability.

Alleged contradiction in the pleadings and deposition of the respondent-complainant pointed out by learned counsel for the petitioner is completely mis-conceived inasmuch as learned counsel cannot be permitted to read pleading of the respondent-complainant in isolation or piecemeal. In case, pleadings of the respondent-complainant in her complaint are read as a whole, in that eventuality, only irresistible conclusion which can be drawn is that she had advanced friendly loan as well as handed over some money to petitioner for purchase of property on her behalf, he being a property dealer. Pleadings and affidavit of the respondent-complainant

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petitioner, who very crookedly cheated her, finding her hapless and a widow.

Petitioner in his defence examined DW1 Rajesh Sharma, who, instead of helping him, supported the respondent-complainant by admitting that petitioner had issued eleven cheques of ₹99,50,000/- in favour of the respondent-complainant.

Facts and circumstances of the authorities relied upon by learned counsel for the petitioner are not identical to the facts of the present case, rather are completely distinguishable inasmuch as petitioner did not lead any evidence to rebut presumption in favour of respondent under Section 139 of the Act. Therefore, no benefit of the same can be given to the petitioner.

So far as making the sentences of the petitioner cocurrent is concerned, this Court does not find any ground to do the same inasmuch as total amount payable by him to the respondent was ₹1.35 crore. However, the petitioner only issued cheques for ₹99,50,000/-. In this way, the petitioner has not only cause loss of ₹35.50 lakh to the respondent, but also caused loss of interest too since the year 2011 on an amount of ₹1.35 crore.

The fact cannot be lost sight of that in cases under the Act, aggrieved party visualising cumbersome and lengthy Court procedure always agrees to part with some amount or interest over it. Instant case is such an example, where respondent-complainant feeling herself helpless, being a widow, under forced circumstances, entered into compromise with the petitioner forgoing her considerable amount of ₹35.50 lakh. Money of the respondent usurped by the petitioner is huge touching a crore. Such

type of offenders do not deserve any leniency from the Court.

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Apart from above observation, this Court is fortified by the judgment of the Hon'ble Supreme Court in *V.K. Bansal's* case (supra).

In view of discussion made above, all the revisions are dismissed.

March 29, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

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