

**250 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1391-2019 (O&M)

Date of decision-14.01.2020

Mahinder Kumar

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Namit Khurana, Advocate for the petitioner.

Mr. Nishchal Mann, DAG, Haryana.

Mr. Karan Singh, Advocate for respondent No.2.

MANOJ BAJAJ, J.

Through this revision petition, the petitioner has challenged the Appellate Court order dated 01.05.2019 whereby the appeal against the judgment of conviction and order of sentence dated 07/08.11.2016, passed by learned Judicial Magistrate First Class, Yamuna Nagar convicting the petitioner under Section 138 Negotiable Instruments Act, 1881 (for short 'of the Act') was dismissed.

The brief facts leading to the present petition are as under:-

Complainant Deepak Walia had brought complaint under Section 138 Negotiable Instruments Act, 1881 against the petitioner wherein it was alleged that a sum of Rs.16,50,000/- was received by Deepak Sharma from complainant for sending him abroad, however, the said promise was not kept and in that regard, a complaint was made at Police Station City,

Yamuna Nagar where a compromise was arrived at between the complainant and Deepak Sharma and Sanjeev Kumar on 19.03.2015. As per compromise, it was agreed that accused-Deepak Sharma and Sanjeev Kumar will pay a sum of Rs.15,50,000/- to the complainant and out of it Sanjeev Kumar had agreed to pay a sum of Rs.9 lacs by 30.04.2015. In order to discharge the said liability, a cheque bearing No.032193 dated 30.04.2015 for an amount of Rs.9 lacs, drawn at IDBI Bank, Branch Mela Singh Chowk, Model Town, Yamuna Nagar, was issued. The said cheque belonged to the account of Mahender Kumar (brother of Sanjeev Kumar). Upon presentation of the cheque, the same was dishonored on 17.06.2015 due to “insufficient funds”. As per the complainant, the statutory notice dated 01.07.2015 was issued, however, the accused failed to make the payment and therefore, the complaint was presented before the Court.

Complainant adduced preliminary evidence in support of his case and upon finding a *prima facie* case, the trial Court issued the process against the accused for commission of offence punishable under Section 138 Negotiable Instruments Act, 1881.

After the appearance of the accused, the trial commenced and complainant examined himself as CW-1. Ram Parsad, Advocate Notary Public, District Court, Jagadhari was examined as CW-2. Thereafter, statement of the accused under Section 313 Cr.P.C was recorded wherein he pleaded that his brother Sanjeev Kumar alongwith Deepak Sharma and others were doing the work of sending persons abroad and the money was received by them through Deepak Walia. He further explained that

complainant had given a complaint against Deepak Sharma at Police Station City, Yamuna Nagar in respect of the amount of Rs.16,50,000/- received by him and Deepak Sharma had called the brother of the petitioner at the Police Station. The cheque in question was obtained from him under pressure, however, the compromise dated 19.03.2015 was admitted. Thereafter, the accused in support of his defence, tendered on record copy of FIR No.101 dated 29.02.2016 as Ex.D1, statement of Deepak as Ex.D2, status report of case FIR No.101 dated 29.02.2016 as Ex.D3, copy of order dated 15.09.2016 as Ex.D4 and copy of challan under Section 173 Cr.P.C as Ex.D5. No witness was examined in defence and defence evidence was closed.

After appraisal of the evidence, learned trial Court vide its judgment dated 07/08.11.2016 convicted the accused under Section 138 Negotiable Instruments Act, 1881 and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a compensation of Rs.9,30,000/- to the complainant. In default of payment of compensation, he was further directed to undergo rigorous imprisonment for three months.

Feeling aggrieved against the above judgement of conviction and the order of sentence passed by the learned trial Court, an appeal was filed by the accused before the Additional Sessions Judge, Yamuna Nagar and the same was dismissed vide judgment dated 01.05.2019.

Learned counsel for the petitioner has contended that it is the case of the complainant himself that the amount was paid by him to one Deepak Sharma, therefore, there was no occasion for the petitioner to

discharge the said liability. According to him, once the cheque is not discharged towards the liability, the offence under Section 138 of the Act would not be made out. He has contended that the judgment of conviction passed by the trial Court as well as the Appellate Court deserve to be set aside.

During the course of hearing, learned counsel for the petitioner has produced the copy of the compromise-Exhibit CW-2/B. As per the compromise, Deepak Sharma had received the amount from Deepak Walia (complainant) and even the brother of the petitioner was not involved in the said transaction. It is contended that in the absence of this material ingredient that the cheque was not issued by the petitioner towards discharge of the legally enforceable debt, the conviction recorded by the Courts below is not sustainable. Except for this argument, no other point was argued.

After hearing learned counsel for the parties, this Court finds that the argument is without any merit. A perusal of the Exhibit CW-2/B clearly mentions the terms of compromise and the parties had agreed that a sum of Rs.9 lacs would be paid by Sanjeev Kumar on 30.04.2015 to Deepak Walia. To discharge the said liability, Sanjeev Kumar handed over a cheque No.032193 dated 30.04.2015, drawn at IDBI Bank, Branch Mela Singh Chowk, Model Town, Yamuna Nagar for a sum of Rs.9 lacs. The cheque belonged to the account of his brother, namely, Mahinder Kumar son of Yashpal (petitioner). The said compromise is not only signed by those three parties, Deepak Sharma, Deepak Walia and Sanjeev Kumar, but the petitioner is also signatory to the said agreement. It is clear that the cheque

was willingly issued by the petitioner to discharge the legally enforceable debt of his brother. Therefore, it cannot be said that the ingredients of the offence are not complete.

A perusal of the impugned judgment passed by the trial Court as well as Appellate Court reveals that the Courts have carefully considered the entire material evidence on record and held the petitioner guilty. The complainant has successfully established the charge against the petitioner.

At this stage, learned counsel for the petitioner submits that he is about to complete the sentence of one year and therefore, same be reduced to the period already undergone. This argument is again without any merit as the trial Court has already shown leniency while imposing the sentence of imprisonment of one year.

In view of the above, no ground is made out for interference.

Petition is dismissed.

(MANOJ BAJAJ)
JUDGE

14.01.2020

vanita

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