IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. 17343 of 2020 in/and
CRR No. 2202 of 2019 (O & M)
Date of decision: 31.07.2020

Ghukar Singh ....Petitioner(s)

Versus

Boota Singh ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Ranjeet Kumar, Advocate (Legal Aid Counsel), for the applicant-petitioner.

Mr. Avtar Singh Sandhu, Addl. A.G., Punjab.

(Proceedings are conducted through video conferencing as per instructions).

G.S.SANDHAWALIA, J.

Crl. Misc. No. 17343 of 2020

Application for pre-ponement of the main case from 06.10.2020 is allowed, in view of averments made in the application.

Hearing of the main case is preponed from 06.10.2020 to today and the same is taken up for hearing today itself.

Crl. Misc. No. 27018 of 2019

Notice in the application for condonation of delay of 17 days in filing the revision petition, which has been filed through a legal aid counsel.

In view of averments made in the application, the application is allowed.

Delay condoned.

Main Case (O & M)

The present revision petition filed under Sections 397/401 Cr.P.C. by the accused is preferred against the judgment of conviction under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') recorded by the Judicial Magistrate Ist Class, Barnala dated 31.10.2017. The petitioner has been sentenced to undergo rigourous imprisonment for a period of 1 year and further direction to pay compensation of Rs.1,50,000/- under Section 357(3) Cr.P.C. Liberty has been given to the complainant to recover the compensation amount either from the accused or from his personal properties under law. The said conviction has been upheld by the Sessions Judge, Barnala vide judgment dated 18.05.2019 and, therefore, the same is also under challenge.

The complaint was filed on the basis of the bouncing of the cheque (Ex.C-1) on account of insufficient funds on 03.06.2016 for Rs.1,50,000/- drawn on Axis Bank dated 10.04.2016. Legal notice dated 09.06.2016 (Ex.C-3) had been served upon the petitioner within the prescribed period, to which he did not reply. Resultantly, the complaint was filed, which has led to the conviction of the petitioner.

The Judical Magistrate Ist Class relied upon Section 146 of the Act and came to the conclusion that it was a prima facie evidence of dishonour of cheque, which had not been rebutted in any manner. The argument as such that the complainant Buta Singh did not have the financial capacity to advance the loan was rejected as the complainant had never been cross questioned on this aspect. It was noticed that the plea under Section 313 Cr.P.C. was also not on the same lines regarding the financial capacity of the complainant. After noticing that the signatures had not been denied and keeping in view the provisions of Section 139 of the Act, it was rightly held that there was a presumption as such which had not been rebutted. The argument that the complainant had not explained his sources of income to advance the money was rejected.

Similarly, the argument that the cheque had been mis-utilized as the same was to be passed to a financier was also rejected as there was no cross examination or any suggestion put to the complainant regarding this aspect but it was a plea taken by the defence witness namely the wife of the accused. It was also noticed that in the plea under Section 313 Cr.P.C., the loan was for medical treatment of the accused whereas the wife had stated that it was for some committee installments. The Trial Court also noticed that the concerned financier had not been examined and resultantly imposed the conviction, as noticed above.

The Appellate Court examined the issue in further detail also while dismissing the appeal. It was noticed that the complainant-wife was also running a ready made garment shop which had come in his cross examination. He had not been questioned regarding the earnings from that shop and neither questioned regarding his ability to raise the said amount. Therefore, it was held that his financial capacity had not been questioned by putting any such suggestion. The account of the complainant having Rs.41,389/- in his bank account was also noticed and the argument had been repelled by holding that nothing had been put to the complainant that he was having only one saving bank account or from where the amount had been arranged. The plea taken under Section 313 Cr.P.C. was also noticed that the cheque had been given to one Handiaya Financier as a surety and the complainant had received the cheque from the financier and, thus, with a malafide intention used the cheque. It was noticed that the financier was never produced in this context and, therefore, the said stand was not liable to be accepted.

It was further noticed that the wife of the accused had been examined and she had deposed that she had owed Rs.12,000/- to Gurmeet Kaur, wife of the complainant on account of 4 installments of a committee. Resultantly, the couple had assured her that they would get the loan sanctioned from Kulwant Singh Handiaya, who was engaged in the business of finance and the complainant had obtained documents from her and her husband including the blank signed cheque of her husband, which was taken as security of the alleged loan. Resultantly, it was noticed that the stands were contrary of the husband and the wife regarding to whom the cheque was handed over. The Appellate Court also noticed that there was admission from the defence witness, the wife of the present petitioner that the notice had been received sent by Buta Singh, the complainant, to which, no reply had been submitted regarding the misuse of the cheque and, therefore, the conviction has been upheld.

Counsel for the petitioner has argued that the financial capacity of the complainant has not been proved and, therefore, the judgments of the Courts below are not sustainable. It is submitted that it was a case of misuse of the cheque issued as security and, therefore, it would not come within the purview of Section 138 of the Act and, therefore, the benefit of doubt should be granted to the petitioner.

After hearing counsel for the petitioner, this Court is of the opinion that the Courts below have already noticed the contrary stand taken by the petitioner-accused. It is also to be noticed that at the initial stage when the legal notice dated 09.06.2016 was served upon him, he did not bother to reply to the same and take a definite stand as such. It was always open to him to reply to the legal notice submitting that the cheque had been obtained from him wrongly by the complainant on the pretext of returning a loan or the fact that the cheque had been handed over by the financier at the behest of the complainant. The third defence which has been taken was that on account of the Committee installments which were due by his wife to the wife of the complainant, the cheque had been handed over. Neither of the three defences were taken by way of reply and, therefore, the subsequent defences which have now been taken are a mere afterthought and are a desperate attempt to clutch at straws to prevent the petitioner from sinking.

The Courts below were justified in holding that the cross examination as such regarding the financial capacity of the complainant was never put to him whether he was in a position to advance the loan as such. As noticed, in cross examination, the complainant has stated that his wife was also running a ready made garment shop. Therefore, the Appellate Court had correctly come to a conclusion that his financial capacity was never questioned to the extent that he did not have the capacity to advance the loan of Rs.1,50,000/-.

In such circumstances, it can be safely said that the complainant had discharged his onus as such and the presumption had to be rebutted by the petitioner-accused by taking a credible stand. The contrary stands as such have been discussed above and the Courts below, thus, are well justified in rejecting the same. No illegality or impropriety as such is pointed out in the judgments of the Courts below which would warrant interference under the revisional powers by this Court. Thus, the present criminal revision petition is accordingly dismissed in limine.

It is also pertinent to notice that the counsel for the petitioner has mentioned that the petitioner has already undergone the sentence. The custody certificate dated 26.07.2020 has also been examined, which would go on to show that the petitioner was taken into custody on 18.05.2019 and remained in custody till 24.03.2020. It has also been mentioned in the certificate that the petitioner has been granted special remissions of two months by the order of the ADGP (Jails) dated 24.03.2020. It is, thus, apparent that the petitioner has also undergone his substantive sentence imposed upon him. Accordingly, he be set free, if not already done so and if his custody is not required in any other case.

31.07.2020 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No