

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.1118 of 2021 (O&M)

DATE OF DECISION: 30.11.2021

Kuldeep Kaur

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ankit Rana, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, Deputy Advocate General,
Punjab for the respondent-State.

HARSIMRAN SINGH SETHI, J. (ORAL)

The present revision petition has been filed by the petitioner assailing the order passed by the Judicial Magistrate, Ist Class, Fatehgarh Sahib dated 24.04.2018 by which, the petitioner was held guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to undergo imprisonment for one year along with payment of the amount in question as compensation as well as the order passed in appeal by the Additional Sessions Judge, Fatehgarh Sahib dated 17.08.2021 by which the appeal preferred by the petitioner has been dismissed.

Learned counsel for the petitioner submits that though, the cheque

in question bears the signatures of the petitioner but, the same was not in discharge of any liability and, therefore, the offence for which the petitioner has been convicted and sentenced to undergo imprisonment, is not correct. Learned counsel for the petitioner further submits that even otherwise, the complainant has not been able to show as to from where the amount, which was paid to the petitioner, was procured and as the source of the amount, paid to the petitioner, the return of which was being effected through the cheque issued by the petitioner, which cheque ultimately bounced was not shown by the complainant, no offence could be made out against the petitioner.

I have heard the learned counsel for the petitioner and have gone through the record of the case with his able assistance.

Concededly, the cheque in question has been issued by the petitioner. That being so, the presumptions as envisaged under Section 139 of the Negotiable Instruments, Act, 1881 arise that the said cheque has been issued to discharge the liability. Though, the petitioner is well within his jurisdiction to contest the said liability and overrule the presumptions but the same has to be done by way of leading evidence. On being asked, what evidence has come on record to show that the petitioner had not given the cheque to discharge his liability, nothing has been pointed out to support the said contention that the cheque was not issued to the complainant to discharge the liability, rather the only argument raised is that the complainant has not been able to show the

source of money, which was given to the petitioner.

The said question of fact, which is being pressed by the petitioner about the source of money given by the complainant, has also not been proved by the petitioner to show that complainant did not have that amount with him at the relevant time. The factum that the complainant did not have any source of the amount given to the petitioner has also not been proved before the trial Court. There is nothing on record to show that the complainant did not have money in question, which was given to the petitioner and for return of which the petitioner had given the cheque, which ultimately bounced. Rather complainant has produced his bank statement to show his capability to advance the amount mentioned in the cheque. Keeping in view the said factum, which is conceded by the learned counsel for the petitioner, the petitioner has not been able to overcome the presumptions as envisaged under Section 139 of the Negotiable Instruments Act, 1881.

On the last date of hearing, the petitioner had prayed for adjournment so as to discharge his liability but today learned counsel submits that the petitioner does not have money to return to the complainant. This fact prima facie shows the intention of the petitioner as of now.

Keeping in view the above, as the learned counsel for the petitioner has not been able to point out any infirmity in the judgments hence on the basis of the evidence, which is already on record, no interference is called for by this

Court with the judgment passed by the trial Court, which is already upheld by the lower appellate court.

Dismissed.

Crl.Misc.Nos.32663 & 32664 of 2021

In view of the order passed in the main petition, the applications stand disposed of as infructuous.

November 30, 2021

jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No