

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CRM-M-42096 of 2020
Date of Decision: 05.03.2021

Jaswinder Singh

..... Petitioner

Versus

Jagdambay Trading Co. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rajat Dogra, Advocate, for
Mr. Karanjeet Singh Brar, Advocate,
for the petitioner.

Ms. Bhavna Kapur, Advocate,
for the respondents.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing

On 25.02.2021, the following order had been recorded, also
reproducing therein the orders passed on 15.12.2020 and 19.02.2021:-

“Case heard via video conferencing.

On 15.12.2020, the following order had been passed:-

“By this petition, the petitioner seeks setting aside of the
impugned order dated 27.02.2019 (copy Annexure P-3), passed by
learned Judicial Magistrate Ist Class, Kapurthala, vide which the
petitioner has been declared as a 'Proclaimed Person' in Criminal

Complaint Case No. 23, dated 04.04.2016, titled as **Jagdambay Trading Co. and another vs. Jawinder Singh**, filed under the provisions of Section 138 of the Negotiable Instruments Act, 1881.

Learned counsel for the petitioner submits that the petitioner having been gone abroad on 22.11.2018, he returned therefrom only on 21.11.2020, with the impugned order having been passed on 27.02.2019.

He further submits that in fact the case in which he has been declared to be a 'Proclaimed Person' is one filed under the provisions of Section 138 of the Negotiable Instruments Act, 1881, in which most of the amount as was to be paid to the respondents, has already been paid, with only Rs. 60,000/- still remaining to be paid, which the petitioner is willing to immediately pay.

Notice of motion be issued to the respondents, returnable on 01.02.2021.

In the meanwhile, upon the petitioner surrendering before the trial court, he shall be admitted to bail to the satisfaction of that court, till the next date of hearing before this court, with the petitioner to also place on record, the summons issued by the trial court in the proceedings under Section 138 of the Act of 1881, for this court to determine as to whether, even if the complaint itself is to be compounded/compromised between the parties, any costs need to be imposed upon the petitioner for not responding to summons of the court.”

Thereafter on 19.02.2021, the following order was passed (after reproducing the earlier order):-

“Today counsel for the petitioner has not come present but Ms. Bhavna Kapur, Advocate, has appeared for the respondents and submitted that in fact a completely false averment was made on the last date of hearing by the counsel for the petitioner, because in fact no amount has been paid by the petitioner to the complainant to discharge his liability in respect of the cheque in question and the complainant would be filing an affidavit to that effect, along with a statement of its Chartered Accountant.

Since counsel for the petitioner has not come present, possibly because it is past 4.00 p.m., adjourned to 25.02.2021.

To be shown in the urgent motion list.

It is made clear that if the counsel for the petitioner is not present on that date also, the petition shall be dismissed with costs and the interim order vacated.

In the meanwhile, the complainant would file an affidavit to the above effect.”

Today, counsel for both parties are present, with learned counsel for the petitioner submitting that the amount claimed by the petitioner as regards the cheque in question, is Rs. 8,00,000/- but with Mr. Brar submitting that as a matter of fact the amount to be paid by the petitioner was far less and an extra amount was filled in a blank cheque given to the petitioner, who is a commission agent.

That contention is not even being gone into by this court as that touches on the merits of the criminal complaint itself, with this court only concerned in the present petition with the order declaring the petitioner to be a proclaimed person. What is also to be considered is the statement made on behalf of the petitioner by his counsel on 15.12.2020 before this court, when obviously the petitioner as also his counsel were fully aware of the fact that the cheque in question, as is stated to have been dishonoured, was for an amount of Rs. 8,00,000/- and therefore the implication of stating that only Rs. 60,000/- remained to be paid, would imply that Rs. 7,40,000/- had already been paid.

Hence the contention that Rs. 8,00,000/- was not the amount to be paid, is not even being entertained by this court, which would be subject matter of contention before the trial court in the complaint filed under the provisions of Section 138 of the Negotiable Instruments Act, 1881.

Faced with the aforesaid situation, when this court was in the process of dismissing this petition, learned counsel for the petitioner submits that in fact the petitioner even today has settled the matter with the complainant (which learned counsel for the complainant

denies) and submits that before the next date of hearing either counsel for the complainant would make that statement on new instructions received by him, or he would place on record any such settlement arrived at.

In view of the above, without making any comment whatsoever on the correctness of that statement made by counsel for the petitioner, hearing in this petition is adjourned to 05.03.2021. To be shown in the urgent motion list. It is made clear that unless a categorical statement is made by counsel for the complainant, or any affidavit of the complainant is placed on record showing the matter to have been settled between the parties, this petition shall stand dismissed on that date itself, if necessary with heavy costs, with no further order required to be passed by this court.”

Today learned counsel for the complainant submits that she has taken specific instructions from the complainant (respondent no.1 herein) that in fact no such compromise has been effected between the parties.

That being so, learned counsel for the petitioner seeks to withdraw this petition because he submits that as per his instructions even today, the petitioner is constantly telling him that he is in the process of compromising the matter.

Very obviously, instructions given by the petitioner to counsel have been incorrect right from the inception itself, as is obvious from the orders passed on the previous dates.

Consequently, this petition is dismissed, with costs of Rs.35,000/- imposed upon the petitioner, out of which Rs.25,000/- be paid to respondent no.1 with Rs.10,000/- to be deposited in the High Court Legal Services Committee, time of this court having been wasted by the petitioner, with him also having

misled this court.

The costs be paid within one month.

March 05, 2021
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No