

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRR No.549 of 2020 (O&M)
Date of Decision: 16-03-2022.**

Bhoop Singh Chauhan @ Bhupinder Singh & Another
.....Petitioners

Versus

Bimal Kumar & Another
.....Respondents

CRR No.735 of 2020

Bimal Kumar
.....Petitioner

Versus

Bhoop Singh Chauhan @ Bhupinder Singh & Others
.....Respondents

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Sunil Chadha, Senior counsel with
Mr. Akshay Chadha, Advocate,
for the revisionists-petitioners
(in CRR No.549 of 2020) and
for respondents No.1 & 2 (in CRR No.735 of 2020).

Mr. Rajinder Singh Rana, Advocate,
for the revisionist-petitioner (in CRR No.735 of 2020) and
for respondent No.1 (in CRR No.549 of 2020).

Mr. Manish Dadwal, AAG, Haryana,
for respondent No.2 (in CRR No.549 of 2020) &
for respondent No.3 (in CRR No.735 of 2020).

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MEENAKSHI I. MEHTA, J.

Both the instant revision petitions are being taken up
together for discussion and adjudication as these have arisen out of the

same set of the judgments as rendered by both the Courts below.

CRR No.549 of 2020 has been preferred by the revisionists-petitioners (here-in-after referred to as ‘the petitioners’) named Bhoop Singh Chauhan @ Bhupinder Singh and Kaka to assail the judgment dated 12.05.2017 and the order on sentence dated 16.05.2017 as passed by learned Judicial Magistrate 1st Class, Ambala (for short ‘the trial Court’) in Criminal Case No.31 of 2011 titled as **Bimal Kumar vs. Bhoop Singh Chauhan & Another** holding them guilty for committing the offence under Section 420 IPC and sentencing each of them to undergo the rigorous imprisonment for a period of two years and to pay the fine of Rs.5,000/- for the same as well as the judgment dated 21.01.2020 handed down by learned Additional Sessions Judge, Ambala (for short ‘the Appellate Court’) in the Criminal Appeal No.196 of 2017 filed by them against the afore-mentioned judgment and order on sentence whereby their conviction has been upheld, although the order on sentence has been modified by reducing their substantive sentence to the simple imprisonment for a period of 1½ years whereas in **CRR No.735 of 2020**, the revisionist-petitioner Bimal Kumar (here-in-after referred to as ‘the complainant’) has laid the challenge to the said judgment as passed by the Appellate Court so far as it pertains to the afore-discussed modification in the order on sentence.

As per the brief factual-matrix culminating in the present revision-petitions, the complainant filed the above-mentioned Criminal Complaint Case against both the afore-named petitioners in CRR No.549

of 2020 alleging therein that they were well-acquainted and were on good terms with him. On 31.10.2010, they came to him and persuaded him to invest the amount of Rs.25 lac while assuring that he would be earning Rs.One (01) lac per month therefrom and petitioner No.1 promised/guaranteed for the same. He (complainant) raised a loan to the tune of Rs.25 lac from one Varinder Shastri for the said purpose and on 01.11.2010, he handed over/paid the above-said amount to petitioner No.2 in the presence of Rakesh Kumar. Thereafter, the petitioners kept on dilly-dallying the matter and on his insistence, petitioner No.1 refunded the sum of Rs.One (01) lac to him. Then, a Panchayat was convened wherein the petitioners admitted the factum of their having taken the above-said amount from him on the pretext of business activities and sought time for the repayment thereof but they failed to do so. On 21.08.2011, a Panchayat was convened again and both the petitioners flatly refused to repay the said amount.

After recording the preliminary evidence as adduced by the complainant, the trial Court referred the matter to the concerned Station House Officer for its investigation as envisaged under Section 202 Cr.P.C and after conducting the enquiry for this purpose, the police submitted the report and both the petitioners were summoned to face the trial under Sections 420, 504 and 506 IPC. Then, the complainant led his pre-charge evidence and after hearing learned counsel for both the parties, the trial Court framed the charge against the petitioners under Sections 420, 504 and 506 IPC. The petitioners pleaded not guilty to the

same and claimed trial. Thereafter, the complainant concluded his evidence. Then, the petitioners were examined under Section 313 Cr.P.C to explain the incriminating circumstances/material appearing against them in the evidence as led by the complainant on the record wherein they claimed innocence and denied all the allegations levelled against them. They also tendered some documents in their defence evidence. The trial Court, vide the impugned judgment dated 12.05.2017, acquitted the petitioners under Sections 504 & 506 IPC but held them guilty for committing the offence under Section 420 IPC and also awarded the sentence to them for the same vide the impugned order dated 16.05.2017 as described in the opening paras of this judgment. Vide the impugned judgment dated 21.01.2020, the Appellate Court disposed of the Criminal Appeal, as preferred by the petitioners against the above-said judgment and the order on sentence, while upholding their conviction but modifying the order on sentence as discussed earlier.

I have heard learned Senior counsel for the petitioners as well as learned counsel for the complainant and learned State counsel in both these revision petitions and have also perused the record thoroughly.

Learned Senior counsel for the petitioners (in CRR No.549 of 2020) and for respondents No.1 & 2 (in CRR No.735 of 2020) has contended that both the Courts below have failed to appreciate and evaluate the evidence led in the said Complaint Case, in the correct perspective because the complainant has not placed any document on the record to prove the payment of the amount of Rs.25 lac by him to the

petitioners and he has neither examined said Rakesh Kumar, whom he claims to be a witness to the said payment nor has examined said Varinder Shastri from whom he claims to have borrowed this amount, as his witnesses but despite all these circumstances, both the Courts below proceeded to hold the petitioners guilty and to award the sentence to them as discussed in the preceding paras and it being so, this Court, inspite of being the Revisional Court, can look into and re-appreciate/re-evaluate the evidence qua the factual aspects of the said dispute between the parties. To buttress his contentions, he has placed reliance upon **Amit Kapoor vs. Ramesh Chander and another 2012 (4) RCR (Criminal) 377; Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and Others 2015(1) RCR (Criminal) 570 and Chandra Babu @ Moses vs. State through Inspector of Police & Ors. 2015(3) RCR (Criminal) 606.**

He has further contended that the report, sought by the trial Court and submitted by the police under the provisions as contained in Section 202 Cr.P.C, has also been heavily relied upon by the trial Court to record the conviction of the petitioners and has also been given unwarranted weightage by the Appellate Court whereas it could have been used for the limited purpose of ascertaining as to whether the process could be issued against the petitioners in the said Complaint Case or not and both the impugned judgments deserve to be set aside on this score. He has placed reliance upon **Birla Corporation Limited vs. Adventz Investments and Holdings Limited & Others 2019(5) RCR**

(Criminal) 810 and **Shivjee Singh vs. Nagendra Tiwary and Others**
2010(3) RCR (Criminal) 466 in support of this contention.

Per-contra, learned counsel for the complainant as well as learned State counsel have argued that the complainant has led cogent and sufficient evidence on the record to substantiate his allegations against the petitioners and he himself had faced the trial and had been held guilty for committing the offence under Section 138 of the Negotiable Instruments Act (for short 'the NI Act') in the Complaint Case preferred by said Varinder Shastri against him on account of the dishonour of the cheque as issued by him (complainant) towards the repayment of the loan, as secured by him for paying the above-said amount to the petitioners and moreover, the Courts below have not recorded the conviction of the petitioners solely on the basis of the above-said report as submitted under Section 202 Cr.P.C and therefore, both the impugned judgments holding the petitioners guilty for the said offence are perfectly legal and logical but they have further argued that in view of the gravity of the offence as committed by the petitioners in this case, the impugned judgment passed by the Appellate Court is liable to be set aside so far as it pertains to the afore-discussed modification in the order on sentence and the order, as passed by the trial Court for awarding the sentence to the petitioners, deserves to be restored.

I do not find the contentions, as raised by learned Senior counsel for the petitioners, to be tenable because even if the complainant did not examine said Rakesh Kumar and Varinder Shastri as his

witnesses in this case, even then this Court cannot lose sight of the fact that said Varinder Shastri filed Criminal Complaint Exhibit PA against the present complainant under Section 138 of the NI Act with the allegations that the complainant had raised the loan of Rs.25 lac from him on 01.11.2010 and had issued the cheque towards the repayment thereof but the same was dishonoured by the concerned Bank. It is worth-while to mention here that the complainant has specifically alleged in his complaint that he had paid the amount of Rs.25 lac to the petitioners on 01.11.2010 only. Vide the judgment Exhibit PB, the complainant was convicted and awarded sentence in the said Complaint Case for the commission of the offence under Section 138 of the NI Act.

Concededly, the petitioners were very well known to the complainant since much prior to the day of the monetary transaction in dispute. They have neither come forward with any fair, candid and plausible reason or explanation as to why the complainant, despite having been on good terms with them, would falsely implicate them in the Complaint Case nor they have not led any evidence on the record to show that the complainant had been nurturing any grudge/ill-will/malice against them due to any peculiar reason. Though, the petitioners have tendered the documents relating to the above-said Complaint Case filed by said Varinder Shastri against the present complainant, in their defence evidence but the fact remains that none of them himself stepped into the witness-box to make depositions to rebut/falsify/controvert the testimonies of the complainant himself as CW-1 as well as of CW-2

Anirudh Aggarwal, the son of the complainant, regarding the payment of the above-said amount to them. Moreover, CW-3 Hira Lal, an independent witness, has also categorically deposed that during the proceedings of the Panchayat as convened for settling the dispute between the parties, the petitioners had admitted their liability to pay the disputed amount to the complainant. The petitioners have also not been able to set-forth any cogent reason to disbelieve/discard the testimony of this witness. The afore-discussed facts and circumstances unequivocally lead to an irresistible conclusion regarding the payment of the afore-said amount by the complainant to the petitioners on their false assurance of his earning the income from the said investment and hence, the concurrent findings, as returned by both the Courts below to the same effect, can, by no stretch of imagination, be termed to be perverse or against/in contravention of the evidence adduced on the record so as to warrant any re-appreciation or interference by this Court.

It being so, the observations made by Hon'ble the Supreme Court in **Amit Kapoor (supra), Sanjaysinh Ramrao Chavan (supra)** and **Chandra Babu @ Moses (supra)** are of no help to the petitioners in this case because all that has been held in the afore-cited cases is that the revisional jurisdiction should be exercised cautiously by this Court and normally, it should be exercised on a question of law and when the factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. However, in the instant case, as discussed earlier, the findings recorded by both the Courts below in the

impugned judgments cannot be held to be perverse or against the factual position emerging from the evidence available on the record.

As regards the evidentiary value of the report as submitted by CW-4 ASI Suresh Kumar, it is pertinent to mention here that even if the said report is not taken into consideration, even then, the testimonies of the complainant as CW-1, his afore-named son as CW-2 and said Hira Lal as CW-3, coupled with the above-narrated circumstances, do suffice to prove the commission of the offence by the petitioners under Section 420 IPC. In these circumstances, the observations made by the Apex Court in **Birla Corporation Limited (supra)** and **Shivjee Singh (supra)**, regarding such report being relevant for considering and ascertaining the aspect of the issuance of the process against the accused, will not be of any avail to the petitioners.

So far as the afore-discussed modification in the order on sentence by the Appellate Court is concerned, keeping in view the facts that the petitioners have been undergoing the ordeal of facing the criminal proceedings since the year 2011 and there is nothing on the record to show that they were ever previously convicted for committing the similar offence, the above-said modification in the order on sentence cannot be held to be unreasonable or irrational.

As a sequel to the fore-going discussion, it follows that the impugned judgments, as passed by both the Courts below qua the conviction of the petitioners, do not suffer from any illegality, irregularity, infirmity or perversity so as to call for any interference by this Court and

therefore, the same are upheld and the order passed by the Appellate Court qua the modification in the substantive sentence, as awarded by the trial Court to the petitioners, in the afore-described manner, is also logical and justified. Resultantly, both the revision petitions in hand, being *sans* any merit, stand dismissed.

16th March, 2022.
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*