

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR-521-2022 (O & M)****Date of decision: 21.07.2022**

Anil Dhir and another

....Petitioners

V/s

State of Punjab and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. D.S. Sidhu, Advocate,
for Mr. Vikas Bali, Advocate, for the petitioners.

JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been filed impugning the judgment dated 12.05.2017 passed by the Additional Sessions Judge, Ludhiana whereby the appeal filed by the petitioner was dismissed and the judgment of conviction dated 14.09.2015 passed by the Judicial Magistrate Ist Class, Ludhiana was upheld.

2. The brief facts of the case are that the complainant-Sh. Pankaj Galhotra proprietor M/s Anahita Enterprises filed this complaint alleging *inter alia* that he was doing the business of manufacturing knitted fabric and the accused No.1-Anil Dhir (petitioner No.1 herein) on behalf of accused No.2-M/s Refine Traders (petitioner No.2 herein) purchased the said goods from the complainant through invoice No.32 dated 20.03.2013 for Rs.4,58,000/- and in order to discharge their legal enforceable liability towards the complainant, the accused No.1/petitioner No.1 on behalf of accused No.2 issued a cheque bearing No.985877 dated 23.03.2013 for Rs.4,58,000/- drawn on Oriental Bank of Commerce, 2594, Main Road

Sunder Nagar, Ludhiana in favour of the complainant, with the assurance that the same would be encashed on its presentation. However, on presentation of the said cheque by the complainant through his bankers, the cheque was received back dishonoured with the remarks "Opening Balance Insufficient" vide bank memo dated 29.03.2013. Upon this, the complainant got issued the statutory legal notice through his counsel on 25.04.2013 calling upon the accused to make good the amount covered under the cheque in question but despite this, the accused did not pay the said amount within 15 days from the date of receipt of the notice. Hence, the complainant had been constrained to file a complaint.

3. Based on the evidence, the accused came to be summoned vide order dated 21.05.2013. Notice of accusation was served upon him on 20.02.2014. During the course of post summoning evidence, Pankaj Galhotra-complainant stepped into the witness box as CW-1 and proved on record documents i.e. invoice Ex.C1, cheque Ex.C2, memo Ex. C3, legal notice Ex.C4, postal receipts Ex.C5 and Ex.C6.

4. The statement of the accused under Section 313 Cr.P.C. was recorded wherein the accused denied all the allegations levelled against him and also pleaded false implication. He stated that the cheque in question had not been issued in order to discharge any legal enforceable liability towards the complainant. In fact the complainant had misused the cheque in question. He did not owe any liability towards the complainant. He alleged that no goods were received by him. Pankaj Galhotra was not the proprietor of Anahita Enterprises. No notice was served upon him. He had not committed any offence and the complainant had forged the cheque Ex.C2. On being asked whether he wanted to lead any defence evidence, the

accused replied in the affirmative but did not examine any witness in his defence.

5. The counsel for the complainant contended during the trial that the accused had issued the cheque in question in discharge of his legal liability. The accused had assured that the cheque would be encashed on presentment but when the said cheque was sent for clearance the same was returned back dishonoured vide memo dated 29.03.2013. Thereafter, a legal notice demanding the payment of the cheque was sent at the correct address of the accused but despite that, the accused failed to make the outstanding payment. On the strength of these facts, it was argued by the learned counsel for the complainant that the provisions of Section 138 of the N.I. Act are duly attracted in this case and the accused was liable to be punished as per law.

6. The learned counsel for the accused/petitioners argued that the accused was falsely implicated in this case as no goods were supplied by the complainant to the accused. Pankaj Galhotra was not the proprietor of M/s Anahita Enterprises and contends of the cheque were not in hand of accused/petitioners. He argued that the complainant had forged the cheque Ex.C2.

7. The Trial Court came to the conclusion that the complainant was nowhere asked to bring on record the document showing him to be a proprietor of M/s Anahita Enterprises. As per provisions of the General Clauses Act, there was a presumption that once the notice had been sent vide a registered post to the address of the petitioners-accused, it was deemed to have been served. The contention that the cheque had been forged had not been substantiated by the accused-petitioners by examining any hand-

accused had failed to rebut the presumption under Section 139 of the N.I. Act that he had issued the cheque in question for the discharge of his legally enforceable debt. In fact, he had failed to raise a probable defence.

8. On the basis of the evidence led, the petitioner came to be convicted and sentenced vide judgment and order dated 14.09.2015 passed by the Trial Court as under:-

Offence under Sections	Sentence RI	Fine	RI in default of payment of fine
138 N.I. Act	One Year	Rs.5,000/-	One Month

9. Against the said judgment, the petitioners preferred an appeal, which came to be dismissed by the Court of Additional Sessions Judge, Ludhiana, vide judgment dated 12.05.2017. However, the accused-petitioner was absent and had been declared a proclaimed offender vide order dated 27.03.2017.

10. As per the learned counsel for the petitioner, the petitioner had been arrested in a criminal appeal bearing No.CR/51/2015 filed in Complaint No.COMA-50222-2013 and was sent to judicial custody on 11.12.2017, because of which, he did not challenge the judgment dated 12.05.2017. Instead he filed an application dated 19.01.2018 (Annexure P-1) before the Trial Court to treat him in custody in the present case as well. However, the said application for allowing the petitioner to be treated as in custody in the present case as well came to be dismissed. Against the said order of dismissal, the petitioner filed CRM-M-715-2019 which came up before this Court wherein on 18.03.2019, the following order (Annexure P-5) was passed:-

“ Learned State Counsel has filed reply by way of affidavit of Sh. Shamsher Singh Boparai, PPS, Superintendent, Central Jail, Ludhiana on behalf of respondents No.1 and 2 in the Court today. The same is taken on record. A copy thereof has been supplied to the opposite side.

There is no representation on behalf of the complainant-respondent No.3.

Let fresh notice to respondent No.3 be issued for 14.05.2019.

Adjourned to 14.05.2019.

In the meanwhile, petitioner is directed to be released on interim bail till the next date of hearing on his furnishing adequate bail and surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.”

11. Because of the above-mentioned order, the petitioner continued on bail despite having been convicted in COMA-50223-2013 (present complaint), which had led to the filing of criminal appeal bearing No.CR-19/2015. It may be pertinent to mention here that in the connected complaint No.COMA-50222-2013, the petitioner had been convicted by the Trial Court. The aforesaid conviction has been upheld by the Lower Appellate Court vide its judgment dated 12.05.2017 and after being arrested in the said appeal, the appellant (petitioner herein) had undergone the entire sentence.

12. During the course of the pendency of the CRM-M-715-2019, a prayer was made to reduce the sentence of the petitioner to the period already undergone by him in COMA-50223-2013. The learned counsel for the petitioner at that stage, submitted that he shall file a criminal revision challenging the judgment dated 12.05.2017 and a prayer for reducing the sentence would be made by him, once, the said revision comes up for

hearing. As the petitioner was continuing on bail by virtue of the interim

order in CRM-M-715-2019, the learned counsel for the petitioner sought permission to withdraw the said petition as once having been convicted vide judgment dated 12.05.2017 in criminal complaint No.COMA-50223 of 2013 and having undergone the sentence in criminal complaint No.50222 of 2013, apparently, nothing survived in CRM-M-715-2019. Thus, the said petition was withdrawn on 19.04.2022 with the understanding that the petitioner would surrender before the Trial Court and this revision petition would be taken up for final hearing on merits.

13. It was in this background that the matter stood adjourned on 21.03.2022 for 18.04.2022, thereafter, for 19.04.2022 and subsequently, thereto for 06.05.2022. Once again on 06.05.2022, a request was made for adjournment and the matter was adjourned to 06.07.2022.

14. The learned counsel for the petitioner on each occasion either on his own or through the proxy counsel, informed the Court that the petitioner was untraceable, meaning thereby that he had not surrendered in that Court pursuant to the judgment of conviction dated 12.05.2017 and in terms of the undertaking given by him during the pendency of the present proceedings that the present revision petition be heard after he surrenders.

15. In view of the above, I shall now proceed to decide the matter on merits.

16. After hearing the proxy counsel and having examined both the judgments of conviction passed by the learned Trial Court as also the learned Appellate Court, I find no ground to interfere with the well-reasoned judgments of the said Courts. Firstly, the service of the notice upon the accused cannot be denied in the light of Section 27 of the General Clauses Act, as per which, a presumption is raised in favour of the complainant that

documents had been forged and fabricated is absolutely incorrect. Had that been the case, the accused would have certainly filed a criminal complaint in that regard. No effort has been made to examine any expert either. Further, there is no denial by the petitioner to the signatures upon the cheque and the stand taken by the petitioner is only that the cheque, in question, had not been issued in the discharge of any legal enforceable debt but had been misused and, in fact, no goods had been received by him. Except his bald assertion, the accused has not been able to raise a probable defence even while referring to the cross-examination of the complainant and his witnesses. Thus, it is apparent that there is absolutely no infirmity in the judgment of conviction passed by either the Trial Court or the learned Appellate Court vide which the judgment of the Trial Court has been affirmed. Therefore, finding no merit in the present petition, the same is hereby dismissed.

17. So far as reducing the sentence of the petitioner is concerned, it may be pointed out that the conduct of the petitioner is extremely disturbing. He, firstly, did not appear at the time the Appeal was pending before the Additional Sessions Judge, Ludhiana, and was thus, declared a proclaimed offender on 27.03.2017. Thereafter, he filed a criminal miscellaneous petition before this Court for treating him to be in custody in this case as well, whereas he had been actually taken into custody in criminal complaint No.COMA-50222-2013, leading to filing of CRA-S-51-2015. This Court had released the petitioner on interim bail vide order dated 18.03.2019 and the petitioner continued as such for a period of approximately three years. When the matter came up for hearing before this Court, an assurance was given that he would surrender and file a revision petition and in that

petitioner to pursue the present revision petition. However, as has already been narrated hereinabove, the petitioner is said to be untraceable which means he has certainly not surrendered.

18. In view of the above conduct of the petitioner, no mitigating circumstances for reducing his sentence are made out and, hence, the said prayer is also declined/dismissed.

CRM-10376-2022

Since the main revision petition has been dismissed, no order needs to be passed in this application.

(JASJIT SINGH BEDI)
JUDGE

July 21, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No