

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.2551 of 2009
Date of Decision: February 2nd, 2022

Sanjiv Kumar & another

..... Petitioners

VERSUS

Haryana Financial Corporation & others

..... Respondents

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CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

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PRESENT: - Mr. B.B. Bagga, Advocate, for the petitioners.

None for respondent No.1 – Haryana Financial
Corporation.

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Sant Parkash, J

In the instant petition, challenge is to judgment dated 14.09.2009 passed by the Sessions Judge, Kaithal, whereby an appeal against judgment of conviction dated 02.08.2006 and order of sentence dated 04.08.2006 passed by the trial court, has been dismissed.

Brief facts of the case are that complainant/ respondent No.1 – Haryana Financial Corporation (for short, 'Corporation') advanced some credit to M/s Anmol Agro India Pvt. Ltd. The petitioners were Directors of the said firm. The firm, through petitioner – Sanjiv Kumar, issued two account payee post dated cheques bearing Nos.641549 and 641550 dated 25.12.1997 and 15.01.1998 in the sum of ₹ 7,50,000/- each, drawn on State Bank of India, Kaithal, in favour of complainant – Corporation, qua payment of amount due towards the petitioners. However, on presentation of cheques before Oriental Bank of Commerce, Kaithal, the same were dishonoured vide memo dated 16.01.1998. Legal notice dated 19.01.1998 was served upon the petitioners but they failed to indemnify the complainant.

Consequently, complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act'), wherein the petitioners were summoned, after preliminary evidence, to face trial under Section 138 of the NI Act vide order dated 13.10.1998. Petitioners herein alongwith Mr. N.M. Chandrana (accused No.4 in complaint case) put in appearance and made statement that they are representing accused No.1 – M/s Anmol Agro India Pvt. Ltd. as its Directors. Accused No.4 – Mr. N.M. Chandrana, however, died during pendency of the proceedings and accordingly proceedings against accused No.4 were dropped vide order dated 25.10.2005 by the trial court. Notice of accusation was served upon the petitioners to which they pleaded not guilty and claimed trial. After evidence of complainant, petitioners were examined under Section 313 Cr.P.C. wherein petitioner No.1 though admitted the issuance of cheques but pleaded that the cheques were misused by the complainant without giving the details of the account.

After hearing learned counsel for the partis and appreciating the evidence, the trial court vide judgment dated 02.08.2006 held the petitioners guilty for commission of offence punishable under Section 138 of the NI Act and vide order dated 04.08.2006, sentenced them simple imprisonment for a period of two years, payment of compensation to the tune of ₹ 15 lac each to the complainant within one month and payment of fine to the tune of ₹ 10,000/- each. In default of payment of fine, the petitioners were ordered to undergo simple imprisonment for three months each. The aforesaid judgment of conviction and order of sentenced were challenged in appeal before the Sessions Court which was also dismissed vide impugned judgment dated 14.09.2009.

Learned counsel for the petitioners has vehemently contended that the courts below have grossly erred in reading the facts and law. The courts below have overlooked the material evidence on record to the effect that ₹ 10 lac had been deposited by the petitioners after dishonour of the cheque and all assets of the petitioners were sold by the respondent – Corporation in realization of gross amount of ₹ 80.10 lac. Learned counsel further contended that it was the duty of complainant to show that cheques were issued by the petitioners in discharge of their liability and that to prove this fact, statement of account and other relevant documents pertaining to loan advanced to the petitioners were not placed on record by the complainant. Learned counsel contended that notice dated 19.01.1998 was served upon the petitioners by the Branch Manager of respondent – Corporation whereas the complaint was preferred through an Assistant of the Corporation. Once the complaint had been filed by a person different from the person who served notice, the complaint was liable to be dismissed.

I have heard learned counsel for the petitioners and perused the record.

It is pertinent to mention here that petitioner No.2 – Kewal Krishan has already died on 11.09.2010 during pendency of the petition, as is evident from Death Certificate dated 17.09.2010 produced in Court.

It is established on record that petitioner No.1 – Sanjiv Kumar had issued cheques Ex.P1 and Ex.P2 for an amount of ₹ 7.5 lac each in favour of complainant, which were dishonoured on account of ‘insufficiency of funds’ on presentation before the banker of the complainant. Legal notice dated 19.01.2006 (Ex.P7) was served upon the petitioners but they failed to indemnify the complainant. Thus, the courts

below did not commit any error in holding the petitioners guilty for commission of offence punishable under Section 138 of the NI Act.

There is no dispute with regard to the signatures found on the cheques and also their execution. Once the signature on the cheques and also the execution of the cheque are admitted, there is a statutory presumption that the cheques were issued for legally enforceable debt and the said presumption is a rebutted presumption. The petitioner has not rebutted the statutory presumption. Both the courts below have found the petitioner guilty for the offence under Section 138 of the NI Act. The judgments of the courts below are concurrent since the issuance of the cheques and also the signature found in the cheques are admitted and also the statutory presumption has not been rebutted by the petitioner. While exercising the revisional jurisdiction, this Court need not to sit in the armchair of the judgments of the courts below. It is enough to see as to whether there is any perversity in the orders of the courts below while appreciating evidence of finding regarding the facts.

The contention on behalf of the petitioner that there was no resolution passed by the Corporation authorizing its Assistant Pritam Singh to file the complaint on behalf of Corporation, is not going to create a dent in the complaint filed by the complainant. Admittedly, Pritam Singh was one of the Assistants of the complainant Corporation. Merely the fact that no authority letter had been issued in favour of Pritam Singh to file complaint, does not *ipso fact* make the complaint liable to be dismissed. The Supreme Court in United Bank of India vs. Naresh Kumar & others, 1997 Supreme Court-3, held that where the Courts came to a conclusion that money had been taken by certain parties from the bank and certain persons had stood as

guarantors and that the claim of the bank was justified, it will be a travesty of justice if the bank is to be non-suited for a technical reason such as plaint was not signed by the competent person which does not go to the root of the matter and the only defect which was alleged on behalf of the parties was one which was curable. Thus, procedural defects which do not go the root of the matter should not be permitted to defeat a just cause. In other words, a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable. In this view of the matter, this Court is of the considered view that even in the absence of any formal letter of authority or power of attorney having been executed, a person by virtue of the office which he holds, could sign and verify the pleadings on behalf of the corporation.

In view of the above discussion, the judgments recorded by the courts below are well reasoned. On reading of the entire material placed before this Court, this Court does not find any perversity in the judgments of both the courts below while appreciating evidence.

Faced with the above situation, learned counsel for the petitioner prays for leniency qua sentence in as much as only petitioner No.1 is alive whereas petitioner No.2 – Kewal Krishan and performa respondent No.2 – N.M. Chandrana, have already expired during the pendency of these proceedings and petitioner has been facing the agony of trial since 1998. Total sum of ₹ 20 lac have already been paid by the petitioner. Besides his assets have also been sold by the complainant, from which, it got an amount of ₹ 80.10 lac.

Taking into consideration the peculiar facts & circumstances of the case coupled with the fact that an amount of ₹ 10 lac had already been

paid by the petitioner after dishonor of cheque(s) and an amount of ₹ 10 lac was deposited in the Treasury Account with State Bank of India, Treasury Branch, Mini Secretariat, Kaithal, vide order dated 25.09.2009 passed by this Court, receipt of which is annexed with the file as Annexure P-4; as also all assets of petitioner were sold by the respondent – Corporation resulting in realization of gross amount of ₹ 80.10 lac, taking a lenient view, period of sentence qua imprisonment of petitioner is reduced to the period already undergone by him, while maintaining the conviction. The petitioner be set at liberty forthwith, if not required in any other case. So far as ₹ 10 lac deposited in the Treasury, referred to above, is concerned, respondent – Corporation is held entitled to get the amount released by moving an appropriate application. As regards compensation, liberty is granted to the complainant to avail appropriate remedy available under law for recovery of compensation, if so advised.

Disposed of accordingly.

Since the main petition itself has been decided, any miscellaneous application pending adjudication is hereby disposed of as having been rendered infructuous.

**(Sant Parkash)
Judge**

February 2nd, 2022
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No