

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

CRR-1353-2021 (O &M)

Date of decision: February 2nd, 2022

Surjit Kaur

.....Petitioner

Versus

State of Haryana and Another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Argued by: Mr. Balraj Gujjar, Advocate
for the applicant-petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana
for the respondent-State.

Mr. G.C.Shahpuri, Advocate
for respondent No. 2

SANT PARKASH, J. (ORAL)

The case has been taken up for hearing through video conferencing.

CRM-36955-2021

Prayer in the application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 1181 days in filing of the present revision petition.

The applicant-petitioner has pleaded in her application that she is an old lady suffering from various chronic diseases. She was treated at General Hospital, Jagadhari, Government Hospital, Sector – 32 and PGIMS, Chandigarh. She is currently undergoing treatment from IVY Hospital, Sector – 71 Mohali. The condition of the applicant remained worse and deteriorated with the passage of time. Due to her medical condition, the applicant-petitioner could not appear before the learned Lower Appellate Court which resulted into dismissal of her appeal and cancellation of bail.

Learned Counsel for the applicant-petitioner while reiterating the contents of the application submitted that the delay of 1181 days occurred in filing of the present revision petition was not deliberate/mala fide but was just for the reason the applicant-petitioner has been suffering from chronic disease and her poor medical condition. Due to her busy schedule of treatment she could not file the revision petition within limitation.

On the other hand, learned Counsel for respondent No. 2 while relying upon the reply submitted to the delay application has submitted that there is a inordinate delay of 1181 days in filing the present revision petition. The petitioner absented herself from the proceedings before the lower Appellate Court, whereafterailable and non-bailable warrant of arrest were issued. The appeal filed by the petitioner was decided in the presence of her counsel and she nowhere pleaded in the application regarding any communication gap between her and the counsel. No plausible explanation has been given about this delay in filing the revision petition. The petitioner has delayed the process of learned Lower Appellate Court for about four years. Therefore, keeping in view the conduct of the petitioner, the application for condonation of delay may be dismissed.

I have heard learned Counsel for the applicant-petitioner and learned Counsel for respondent No. 2 and gone through the record.

A perusal of the medical record placed on the file shows that the applicant-petitioner underwent treatment from General Hospital, Jagadhri; Govt. Hospital, Sector-32, Chandigarh; PGIMS, Chandigarh and is currently having treatment from Ivy Hospital, Sector – 71, Mohali and she was advised complete bed rest.

Having considered the facts and circumstances particularly with regard to the medical condition/treatment of the applicant-petitioner, the present application for condonation of delay is allowed and delay of 1181 days in filing of the revision petition is condoned.

CRR-1353-2021

The petitioner has preferred the instant petition being aggrieved of judgment dated 01.06.2017 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri whereby appeal filed by him, challenging his conviction dated 11.10.2013 and order of sentence dated 15.10.2013, passed by Judicial Magistrate First Class, Jagadhri in Criminal Complaint No. 3281 dated 02.11.2010/02.03.2012 titled as 'Ramesh Chander Vs. Surjit Kaur' under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'Act') has been upheld and appeal dismissed.

The aforesaid complaint was filed against the petitioner on the grounds that her husband took a tractor trolley of the complainant bearing registration No.HR02-S-1537 on rent of Rs.15,000/- per month on the assurance of regular payment of monthly rent. Though, rent for the month of January 2010 had been paid but from the month of February 2010, husband of the petitioner did not pay rent, instead, promised to return the tractor-trolley on 30.03.2010 alongwith payment of rent for the months of February and March, 2010. However, neither he returned the tractor-trolley nor paid the rent. Consequently, the complainant alongwith one Sunil Kumar and Satish Dhingra went to the house of petitioner's husband and demanded the rent and tractor-trolley, however, he was offered to sell the tractor-trolley to petitioner for the sale price of Rs.6 lac which was agreed. In order to discharge the

aforesaid liability, petitioner issued a post dated cheque bearing No.740662 dated 24.07.2010 for a sum of Rs.6 lac drawn on State Bank of India, Branch Ambala Cantt., which, on presentation in Punjab National Bank of India, Branch Jagadhri Workshop, Yamuna Nagar got dishonoured vide Memo dated 03.09.2010 with the remarks 'Payment Stopped'. As such, legal notice dated 25.09.2010 was served upon the petitioner calling upon her to make requisite payment within 15 days which she could not make. Accordingly, the complainant filed the aforesaid complaint.

Petitioner was summoned by the trial court under Section 138 of the Act vide order dated 02.11.2010. Notice of accusation was served, to which she pleaded not guilty and claimed trial. Complainant examined two witnesses. Statement of accused under Section 313 Cr.P.C. was recorded wherein she denied the allegations levelled against her and pleaded innocence while alleging that she never issued the cheque in question and she had no existing liability to discharge towards the complainant, and that, she never purchased any tractor from the complainant. No evidence was led in defence.

After going through the record and hearing counsel for the parties, the trial court vide judgment of conviction dated 11.10.2013 held the petitioner guilty under Section 138 of the Act and sentenced her to undergo RI for one year alongwith payment of compensation to the tune of Rs.7 lac in terms of Section 357(3) Cr.P.C. to complainant within two months vide order of sentence dated 15.10.2013. The aforesaid judgment & order of the trial court were challenged by the petitioner before the lower appellate court, which were dismissed vide judgment dated 01.06.2017, which has now been impugned in the

present revision petition.

Learned Counsel for the petitioner has submitted that the complaint he took a blank cheque signed from her husband which was later misused by the complainant. The cheque in question was not the cheque which was issued in discharge of legally recoverable debt or liability. Infact, her husband was missing since long, therefore she has no lability to discharge towards the complainant. Therefore, the conviction of the petitioner under Section 138 of the Act is completely wrong, illegal and against the mandate of the Act. No legal notice as required under the provisions of the Act was ever served upon the petitioner and the complainant failed to prove the said fact regarding service of legal notice upon the petitioner. The complainant had not adduced any evidence with regard to the cost and price of the tractor-trolly and the courts below wrongly discarded the defense of the petitioner.

Learned Counsel for the petitioner has further submitted that both the Courts below failed to appreciate that the proper recourse for the complainant to satisfy his claim was to file a civil suit for recovery and not to misuse the signed cheque of the petitioner as the issue between the complainant and husband of the petitioner was of purchase of tractor trolley. The complainant also failed to establish any documents showing the sale purchase of the alleged tractor trolley by the petitioner. Lastly, learned Counsel prays that the present revision petition may be allowed and the impugned judgment dated 01.06.2017; impugned judgment of conviction dated 11.10.2013 and order of sentence dated 15.10.2013 be set aside and the petitioner be acquitted from all the charges.

On the other hand, learned Counsel for respondent No.2 has submitted that there is no infirmity or illegality in the impugned judgment as the evidence led by the parties has already been discussed in detail and the same has been re-appreciated by the lower Appellate Court. All the necessary ingredients of the Act have been proved. Petitioner's signature on the cheque have nowhere been disputed. Even the fact that tractor in question was taken on rent by petitioner's husband, is also not disputed. The petitioner failed to discharge her legal liability and the Courts below have rightly held the petitioner guilty for the offence under Section 138 of the Act. Therefore, the revision petition filed by the petitioner be dismissed.

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

In the present case, it is established from the record that signatures on the cheque have not been disputed. Record also reveals that receipt of legal notice and reply to the same have also been accepted. Petitioner took the defence that she did not purchase any tractor-trolley from the complainant; her husband was missing since May 2010, as such, no question arisen of any meeting between her husband and complainant; and that, the cheque in question was lost by her somewhere. However, petitioner has not examined any witness to fortify the aforesaid contentions. There was no evidence on record to prove the factum of missing of her husband. Though petitioner took the stand that cheque was lost by her, but during cross examination of complainant and witnesses, petitioner took contrary stand to the effect that cheque in question was given by her husband to the complainant, without her knowledge. This conduct of the petitioner shows that she

was trying to blow hot and cold in same breathe which is not acceptable.

Moreover, it is also established from the evidence of CW1 and CW2 to the prove the fact that petitioner had herself consented to buy the tractor-trolley from the complainant and had even issued the cheque in question to complainant. In this view of the matter, this Court is of the considered opinion that the courts below have rightly observed that the petitioner has not been able to prove the defence taken by her and to rebut the presumption of existing liability against the complainant.

In the case in hand, petitioner has been convicted and sentenced under Section 138 of the Act by the courts below after considering the fact that ingredients of the said section were fully satisfied. Section 138 of the Act was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so, yet to fasten a criminal liability under the said provision, necessary ingredients of the Section are to be satisfied. Section 138 of the Act reads as follows:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless —

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. - For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:-

“(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;”

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

In the present case, record reveals that the ingredients of Section 138 of the Act have been satisfied inasmuch as the factual position is that the tractor was sold by the complainant to the petitioner who issued cheque dated 24.07.2010 amounting to Rs.6 lacs to the complainant in order to discharge her existing liability. The cheque was presented on 03.09.2010 but the same got dishonored with the remarks 'Payment Stopped'. Thereafter, legal notice dated 25.09.2010 was served upon the petitioner to the requisite payment within 15 days but she failed to make it. Accordingly, complaint was filed on 02.11.2010 with the court having competent jurisdiction. The courts below having satisfied that aforesaid ingredients are fulfilled, rightly held the petitioner guilty under the offence under Section 138 of the Act.

Faced with the aforesaid position, learned counsel for the petitioner has prayed for leniency in the quantum of sentence as the petitioner, a lady, has already been facing the agony of trial since 2010.

As per custody certificate, the petitioner has already undergone more than 5 months of actual sentence out of one year of substantive sentence. It is also on record that she is suffering from various chronic diseases. Taking into consideration the peculiar facts & circumstances of the case as also taking a lenient view, period of sentence qua imprisonment of petitioner is reduced to the period already undergone by her, while maintaining the conviction. The petitioner be set at liberty forthwith, if not required in any other case. 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 revision petition itself has been dismissed,

any application pending adjudication is rendered infructuous and disposed of as such.

February 2nd, 2022
Kavneet/avin

(SANT PARKASH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No