

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

228

CRR-2596-2019 (O&M)

Reserved on: 10.03.2022

Pronounced on: 08.04.2022

SUBHASH CHAND

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Mr. Priyavrat Prashar, Advocate
for the petitioners.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J.

The instant revision petition arises out of the judgment dated 24.09.2019 passed by the Sessions Judge, Kaithal as well as judgment dated 15.05.2019 passed by Judicial Magistrate First Class, Kaithal, whereby, the petitioner-accused has been convicted in Criminal Complaint No. RBT/2221 of 2018 for offence under Section 138/142 of the Negotiable Instruments Act and has been sentenced to undergo imprisonment for a period of three months for commission of offence punishable under Section 138 of the Negotiable Instruments Act with a further direction to pay compensation to the tune of Rs. 3,62,000/- i.e. the amount of cheque in terms of section 357 (3) CrPC.

2. Before advertising to the merits of the instant case, certain facts as are necessary for just appreciation and adjudication of the instant revision petition are extracted herein below:-

2.1 That the respondent-complainant had instituted a criminal complaint on the allegation that the petitioner-accused agreed to sell his Car

(Hyundai i10 Grand Sportz) Model June 2014 to the complainant-responded for a sum of Rs.5 lakhs. The possession of the car was delivered to the respondent-complainant and it was agreed that the petitioner-accused would pay the requisite registration fee.

2.2 In the month of January 2015, respondent-complainant contacted the petitioner-accused to get the registration certificate transferred in the name of the respondent-complainant, whereupon the petitioner-accused assured that he would complete the formalities within a period of one month. Thereafter, the petitioner-accused demanded the car for getting its registration certificate transferred in the name of the respondent-complainant. The possession of the car was accordingly handed over to the complainant, however the accused failed to get the car registered and transferred in the name of the complainant and promised to repay Rs.4,50,000/- within a period of two months.

2.3 The complainant waited sufficiently and contacted the accused to raise the said demand. Many Panchayats were thereafter convened to resolve the matter. Eventually, in August 2016, the accused issued cheque bearing No.32003210 dated 24.08.2016 amounting to Rs.3,62,000/- from his account maintained with Union Bank of India, Cheeka in discharge of his legally enforceable debt and liability in favour of the complainant. The said cheque was presented by the complainant in his account with HDFC Bank, Kaithal on 29th August 2016, however, same was returned unpaid by the banker of the accused with the remarks 'funds insufficient' vide memo dated 29th August, 2016.

2.4 The complainant served a registered notice dated 8th September, 2016,

calling upon the accused to make the payment of the cheque within a period of 15 days from the receipt of the said notice, however, the payment in question was not made out. Resultantly, the complaint in question was instituted by the complainant.

2.5 The accused was summoned to face trial by order dated 17th January 2017, and was thereafter served notice of accusation under Section 138 of the Negotiable Instrument Act, to which the accused pleaded not guilty and claimed trial. The complainant stepped into the witness-box as CW-1 and tendered his sworn affidavit reiterating the contents of the complaint.

2.6 The incriminating evidence was put to the accused, wherein, he denied all the allegations and pleaded innocence. The accused examined Gaurav Bansal, Record-keeper, Judicial Record Room, Kaithal as DW1 and brought on record summoned record pertaining to criminal complaint No.106/2016 titled 'Ramraksh Versus Anil Sharma' instituted under Section 138 of the Negotiable Instrument Act along with certified copies of the documents produced therein.

2.7 He had also examined Anil Sharma, MRC office of Sub Divisional Magistrate as DW-2, who claimed that he had borrowed a sum of Rs.60,000/- from the complainant Ramraksh on interest and the complainant demanded three checks for security purposes and he had handed over two blank cheques from his own account and one blank cheque from the account of the accused in favour of the complainant. The said witness further deposed that he had paid the borrowed amount along with interest of Rs.66,000/- but when he demanded the cheques, they were not returned to him on the pretext that the same

cannot be traced on account of shifting of the house and thereafter a false complaint was filed. A forensic document examiner-Sunil Verma was examine as the DW3.

2.8 Upon consideration of the respective evidence and after hearing arguments advanced by them, the Judicial Magistrate First Class, Kaithal recorded a finding of guilt against the accused person and convicted him for the commission of offence under Section 138 of the Negotiable Instruments Act.

2.9 Aggrieved of the aforesaid judgement of conviction dated 15.05.2019 and order of sentence dated 16.05.2019, the accused preferred an appeal before the Sessions Judge, Kaithal, however, vide judgement dated 24.09.2019, the appeal was dismissed by the Sessions Judge, Kaithal. Hence the revision petition.

ARGUMENTS OF THE PETITIONER:

3. Learned counsel for the petitioner has vehemently argued that the judgements passed by the Courts below are perverse, illegal and arbitrary and hence, liable to be set aside. The following arguments were raised by the learned counsel appearing for the petitioner:-

3.1 The legal liability has not been proved by the respondent-complainant on the file and as presumption under the Negotiable Instrument Act is rebuttable in the absence of the liability being established, the petitioner cannot be held liable for dishonour of the cheque.

3.2 The Courts have failed to appreciate the evidence of DW-2/Anil Sharma and evidence of the experts, who have categorically deposed

that cheque in question was handed over to the complainant as security in lieu of having borrowed amount of Rs.60,000/-.

3.3 That the complainant has failed to produce on record any document to substantiate any transaction between the parties and has not been able to establish his capacity to pay the amount in question.

4. He has further submitted that out of the sentence of three months of simple imprisonment awarded to the petitioner, he has already undergone an actual sentence of 1 month and 25 days, so the sentence in question may be reduced.

5. *Per contra*, Shri Kanwar Sanjiv Kumar, Assistant Advocate General Haryana has contended that the submissions advanced by the petitioner have been duly considered by the Courts below and the concurrent finding recorded by the Courts are based upon appreciation of the entire evidence. Revisional jurisdiction does not extend to re-appreciation of the entire evidence, unless the judgement is perverse and suffers from procedural or legal impropriety or where the conclusions drawn by the Courts are wholly fallacious and not tenable upon correct interpretation of the evidence. He further submits that if the view adopted by the Courts below is possible, the same should not be upset by the High Court in exercise of its revisional jurisdiction as the High Court does not substitute its opinion for that of the Courts below.

6. I have heard the learned counsel appearing for the parties and have noticed arguments of the petitioner about the alleged failure to establish a pre-existing liability and legally enforceable debt and that the impact of the evidence of DW-2 has not been duly considered by the trial Court.

7. The relevant extract of the judgement of the Judicial Magistrate First Class, Kaithal is reproduced as under:-

17. xxxxxxxxxxxxxxx. Since the existence of legal debt and liability stands disputed, therefore, the primary onus was

placed upon the complainant to show that the accused had agreed to sell his car in his favour. In order to prove the said fact, the complainant stepped into the witness box as CW-1 and testified that the accused had sold him the car and he had paid the entire sale consideration to the accused, but the registration certificate was not transferred in favour of the complainant despite various requests, and ultimately, the accused issued the cheque in question to repay the amount given by the complainant. CW-1 further relied upon the affidavits Mark A and Mark B alongwith Form 29 and Form 30 as Mark C and Mark D, to establish the factum of sale of car in his favour. Perusal of these documents, reveals that the car belonging to the accused was sold to the complainant. Further, from the perusal of the documents Mark C and Mark D, it transpires that the accused agreed to get the vehicle bearing ChassisNo.MAL851DLEM134814F, EngineNo.D3FAEM160626, model June 2014 transferred in favour of the complainant. The signatures of accused over the documents have been duly identified by DW-2. Thus, from the aforesaid, it is crystal clear that the accused was having acquaintance with the complainant and he had sold his vehicle to the complainant, which further negate the stand of the accused that he had never sold any such vehicle in favour of the complainant. Moreso, oral testimony of DW-2, to the effect that the accused had sold his vehicle to Roshan and not to the complainant, cannot be looked into evidence, as the accused himself executed the affidavits Mark A and Mark B, which suggest that the accused had sold his vehicle to the complainant. Moreso, DW-2 duly identified the signatures of accused over the documents i.e. Form 30 and Form 29 qua the transfer of the vehicle in favour of the complainant. Thus, once the documentary evidence shows that the accused had sold his vehicle to the complainant, no oral evidence contradicting the terms of the documentary evidence can be relied upon in evidence, in view of the express embargo contained in Section 91 of the Indian Evidence Act.

18. Furthermore, from the defence of the accused, it is clear that the accused has nowhere denied or disputed his signature over the cheque Ex.CC. Once the signature over the cheque are not denied, therefore, the statutory presumption as envisaged under Section 118 and Section 139 of the Act can easily be raised against the accused that the cheque in question was issued for consideration in discharge of the legal debt and liability. Thus, the onus shifts upon the accused to rebut the statutory presumptions under the Act as held in *M/s Kumar Exports v. M/s Sharma Carpets* 2009 (1) Civil Court Cases 778 (S.C.) wherein the Hon'ble Apex Court has held that as per the provisions of Section 118 and Section 139 of the Act, a presumption has to be drawn that cheque was drawn for consideration and that it was executed for discharge of debt or liability once its execution is proved and admitted, and such presumption will live, exist and survive and shall only end when the contrary is proved that the cheque was not issued for consideration and in discharge of any debt or liability. XXXXXXXXXXXXXXXX.

19. xxxxxxxxx.In order to rebut the said statutory presumption, the accused had taken the defence that he had never agreed to sell his car in favour of the complainant nor executed any affidavit as alleged by the complainant, rather the cheque in question was already lying in the possession of DW2, however, the complainant has established on record that the cheque in question was issued by the accused in favour of complainant qua his legally enforceable debt and liability.

21.Moreover, the mere fact that the accused appended only his signatures on the cheque and the body of the cheque was not filled by him would not alone be a sufficient ground to raise doubt in the version of the complainant. Even if the cheque is not filled by the accused, there is no embargo upon the drawee to fill the body of the cheque being the holder in due course. Further, as per the provisions of Section 20 of the Act, it is open to a person to sign and deliver a blank or incomplete

instrument, and it is equally open for the holder to fill up blanks and specify the amount therein. XXXXXXXXXXXXXXXX.

22. Even otherwise, the accused has not denied or disputed his signatures over the documents Mark-A to Mark-D nor got his signatures compared with his specimen signatures, despite the fact that the accused had got examined the fingerprint and handwriting expert as DW-3. Moreso, the accused could not prove by cogent evidence that he had handed over the cheque in question to DW2/Anil Kumar as he had failed to prove on record that he had any monetary transaction between him and DW2/Anil Kumar.

8. Further a perusal of the judgement passed by Sessions Judge Kaithal shows that the evidence as well as the submissions advanced by the petitioner were duly considered. The reasoning of the Sessions Judge Kaithal is being extracted as under.

CW1 deposed that the appellant had sold him the car and he had paid the entire sale consideration to the appellant but the registration certificate was not transferred in favour of the respondent despite various requests, and ultimately, the appellant issued the cheque in question to pay the amount given by the respondent. CW1 further relied upon the affidavits Mark A and Mark B along with Form 29 and Form 30 as Mark C and Mark D, to establish the factum of sale of car in his favour. Perusal of these documents reveals that the car belonging to the appellant was sold to the respondent. Further, from the perusal of the documents Mark C and Mark D, it is revealed that the appellant agreed to get the vehicle transferred in favour of the respondent. The signatures of appellant over the documents have been duly identified by DW2.

The appellant has nowhere denied or disputed his signatures over cheque Ex.CC. Once the signatures over the cheque are

not denied, therefore, the statutory presumption as envisaged under sections 118 and 139 of the Act can easily be raised against the appellant that the cheque in question was issued for consideration in discharge of the legal debt and liability.

Moreover, the mere fact that the appellant appended only his signatures on the cheque and the body of the cheque was not filled up by him, would not in itself be a sufficient ground to raise doubt in the version of the respondent. Even if the cheque is not filled up by the appellant, there is no embargo upon the drawee to fill up the body of the cheque being the holder in due course. Further, as per the provisions of section 20 of the Act, it is open to a person to sign and deliver a blank or incomplete instrument and it is equally open for the holder to fill up blanks and specify the amount therein.

It was held in the case of 'D. Atcyuthna Reddy Vs. State of A.P. 2010(3) CCC (A.P.) 13', that the body of cheque need not to be written by the signatory to the cheque and a cheque could be filled by anybody if it is signed by the account holder of the cheque. It was further held that what is material is signature of drawer or maker and not the body writing, hence, the dispute relating to body writing has no significance.

9. A perusal of the same shows that the Courts below had duly considered the submissions advanced by the petitioner and their impact in light of the settled principles of law. The following facts emerge from a consideration of the submissions advanced by the counsel for the petitioner:

- i. The complainant had established a prior acquaintance with the accused and had also led sufficient evidence to establish purchase of vehicle from the accused.
- ii. The complainant further established that various forms under the Motor Vehicles Act were duly signed by the accused and affidavit reflecting sale of the vehicle with specific chassis number and engine

number were duly signed by the accused.

- iii. The defense witness-DW-2 identified the signatures of the accused and petitioner on the aforesaid form under the Motor Vehicles Act. Hence, the oral testimony which runs contrary to the documentary evidence adduced on record cannot be given much weightage. Any oral evidence contracting the terms of documentary evidence cannot be relied upon as evidence in terms of the embargo contained in Section 91 of the Evidence Act.
- iv. The cheque in question was claimed by the complainant to have been issued by the petitioner accused towards refund of the sale consideration in lieu of the car as the necessary documents for transfer of registered ownership were not fully executed. Hence, the debt in question was a legally enforceable debt. The cheque in question was noted by the Courts below to have been issued in discharge of pre-existing liability.
- v. That the petitioner-accused did not deny or dispute his signatures over the cheque in question. As such, the presumption as envisaged under Section 118 read with Section 139 of the Negotiable Instruments Act, 1881 came into force. Even though the said presumption is a rebuttable presumption, however, no such circumstances have been established by the petitioner-accused on the basis whereof it could be held that the petitioner-accused succeeded in discharging his onus and to have shifted the burden of proof on the complainant.
- vi. A mere fact that the body of the cheque was not filled in by the accused does not discharge the accused of his obligation to dispel the presumption. Section 20 of the Negotiable Instruments Act, 1881

specifically contemplates that where a person merely signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments, either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete a negotiable instruments, for any amount specified therein. Resultantly, the said fact alone is not sufficient to dispel the liability fastened on an accused.

vii. That the petitioner-accused did not bring any evidence to establish that the cheque in question and/or the statutory forms under the Motor Vehicles Act were not signed by him.

viii. That the petitioner-accused did not even bring on record any evidence to suggest that the vehicle with the specified engine and chassis number was not owned by him. The accused-petitioner thus withheld the best evidence available to prove his innocence and inference has to be drawn against the petitioner even on the said account. The surrounding circumstances establish occurrence of the event in the manner as suggested.

ix. That findings of fact have been concurrently recorded by the Courts below. The counsel for the petitioner has not been able to point out any patent error or defect in the judgment passed by the learned Courts below.

10. The same would now lead to the next question relating to the powers of the Revisional Court. It has been held by the Hon'ble Supreme Court in the matter of *Janata Dal Vs. H.S. Chaudhary (1992) 4 Supreme Court Cases 305*, that the controlling power of the High Court under Section 401 Cr.P.C. must be exercised in the interest of justice and with regard to all facts and circumstances of the each

misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted in some undeserved hardship to individuals. The relevant observations of the Hon'ble Supreme Court are extracted as under:-

“128. Section 397, 401 and 482 of the new Code are analogous to Section 435, 439 and 561 (A) of the old code of 1898 except for certain substitutions, omissions and modifications. Under Section 397, the High Court possesses the general power of superintendence over the actions of Courts subordinate to it which the discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this Section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate Court.

129. By virtue of the power under Section 401, the High Court can examine the proceedings of inferior Courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise comes to its knowledge.

130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal Courts - a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one

hand, or on the other hand in some underserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.”

11. Further the issue was again examined in the matter of **Amit Kapoor Vs. Ramesh Chander 2012 (9) SCC 440**. The relevant part of the judgment is read as under:

“The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression ‘prevent abuse of process of any court or otherwise to secure the ends of justice’, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicui con cedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

12. Further in the matter of ***New India Assurance Company Limited Vs. Krishna Kumar Pandey*** decided on 06.12.2019 passed in ***Criminal Appeal No.1852 of 2019***, it was held as under:-

8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C, is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisionsal power is to set right a patent defect or an error of jurisdiction or law.

13. Further , in the matter of ***Duli Chand Vs. Delhi Administration (1975) 4 Supreme Court Cases 649***, the Hon'ble Supreme Court has held that the Revisional Court cannot re-appreciate evidence. The relevant part of the judgment is extracted as under:-

“4. Now, the jurisdiction of the High Court in a Criminal Revision Application is severally restricted and it cannot embark upon reappreciation of the evidence, but even so, the learned single Judge of the High Court who heard the revision application, examined the evidence afresh at the instance of the appellant. This was, however, of no avail, as the learned single Judge found that the conclusion reached by the lower Courts that the appellant was guilty of gross negligence, was correct and there was no reason to interfere with the conviction of the appellant. The learned single Judge accordingly confirmed the conviction and sentence recorded against the appellant and dismissed the revision application. Hence the present appeal by special leave obtained from this Court. “

5.The High Court in revision was exercising supervisory jurisdiction of a restriction nature and,

therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.....”.

14. The revisional jurisdiction of the High Court being restricted to examine whether there is any manifest error of law or procedure, such a power is to be exercised when there is an apparent illegality, gross procedural irregularity or impropriety leading to miscarriage of justice, legal infirmity or gross misappreciation of the evidence that does not reconcile to the conclusion drawn by the Court. The High Court in a revisional jurisdiction would not interfere in the opinion of the Courts below if such an opinion is a possible opinion on the basis of the evidence brought on record and would not substitute its own opinion merely because such opinion is also a possible opinion.

15. Hence in view of the position settled above, the Revisional Court does not substitute its opinion for that of the Courts below merely because some other view is also a possible view. Hence, the petition deserves to be dismissed.

16. While advertng to the submissions advanced by the petitioner as regards sentence, it is evident that the Trial Court had awarded simple imprisonment for 3 months to the petitioner and to pay compensation to the tune of Rs.3,62,000/- i.e. the amount of the cheque to the complainant. The said compensation has not been paid by the petitioner.

17. The matter came up for hearing before this Court on 18th October, 2019, wherein the counsel for the petitioner had made a statement that petitioner is

ready to settle the dispute with the complainant by making payment of appropriate amount to him. On the basis of such statement, the sentence awarded to the petitioner was suspended and he was ordered to be released on interim bail. However, despite having availed opportunity to settle the dispute and to make payment to the complainant, the same was not done. Resultantly, vide order dated 28th December 2021, the petitioner was directed to surrender before the Jail authorities. Further, it is undisputed that the petitioner had not surrendered till 07th February 2022. The custody certificate filed by the State also does not establish his surrender before the Court. It is thus evident that the petitioner has shown scant regard to the concession extended to him by the Court and has not honoured his own statement as well as directions given by the Court. The sentence of simple imprisonment of three months, so imposed upon the petitioner, cannot be said to be excessive or harsh, more so, when the petitioner is already facing yet another complaint bearing No.235/2017 under the Negotiable Instruments Act and is also facing criminal prosecution in case FIR No.123/2020 dated 08.08.2020 for offence under Sections 148, 149, 323, 324, 325, 326, 452, 427 and 120-B IPC P.S. Guhla, District Kaithal. The same shows that petitioner is habitual of indulging in criminal acts and any misplaced sympathy is only likely to embolden him. There are no mitigating circumstances as may have been demonstrated by the petitioner to satisfy the Court for reducing the sentence any further. The sentence imposed cannot be said to be harsh or disproportionate.

Revision petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

08/04/ 2022

S.Sharma(syr)

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