IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.106

CRR-173-2023 (O&M)

Reserved on :19.01.2023

Pronounced on: 01.02.2023

Kulwant Singh ..... Petitioner

VERSUS

State of Punjab and another ..... Respondents

2. CRR-174-2023 (O&M)

Kulwant Singh ..... Petitioner

VERSUS

State of Punjab and another ..... Respondents

3. CRR-175-2023 (O&M)

Kulwant Singh ..... Petitioner

VERSUS

State of Punjab and another ..... Respondents

4. CRR-177-2023 (O&M)

Kulwant Singh ..... Petitioner

VERSUS

State of Punjab and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. G.S. Bedi, Advocate, for the petitioner.

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SUDHIR MITTAL, J.

This judgment shall decide CRR Nos.173, 174, 175 and 177 of 2023. Two of these revisions arise out of orders of the appellate Court dismissing the appeals filed against judgments of conviction. The other two revisions arise out of orders of the appellate Court enhancing the amount of compensation to be paid to the complainant.

The trial Court had convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) and sentenced him to undergo rigorous imprisonment for a period of 02 years and to pay fine of Rs.5,000/- in default of which to further undergo simple imprisonment for 01 month. In appeals filed by the complainant, sentence of imprisonment was maintained, but instead of costs, the petitioner was directed to pay compensation equivalent to the cheque amount along with interest @ 6% per annum from the date of conviction till the date of realization.

As per the complaint filed under the Act, Bahadur Singh father of the accused had relations with the Proprietor of the Firm, namely, M/s Barinder Kumar & Raj Kumar as he used to sell his crop at its shop. On account of this relationship, the accused borrowed a sum of Rs.19,00,000/- on 01.02.2016. This money was required for making payment to Indian Overseas Bank, Rajpura as well as for treatment of his father. The said amount was advanced vide cheque dated 01.02.2016 which was a bearer cheque. In discharge of the liability, two cheques were issued by the accused, each of Rs.10,00,000/-. The first one was dated 30.04.2016 and the second one was dated 06.05.2016. Upon presentation, both the cheques were dis-honoured with the remark 'insufficient funds'. Thus, legal notice dated 13.05.2016 was issued, but the same was ignored leading to filing of two separate complaints. Thus, two separate orders of conviction and sentence were passed. The evidence being the same, both complaints were decided together.

The defence set up by the petitioner was of false implication. According to the petitioner, the money allegedly advanced was never borrowed. The cheques of the petitioner were mis-used. Two leaves were stolen from his cheque book and the signature was forged. This was done in connivance with the bank officials.

Needless to say, the defence has been discarded by both the Courts below.

The first and foremost argument raised by learned counsel for the petitioner is that advance of sum of Rs.19,00.000/- is not proved as the cheque dated 01.02.2016 was a bearer cheque and no identity proof was provided at the time of its encashment. Although, the cheque has allegedly been signed by the petitioner, a perusal of the signature thereon by the petitioner would show that his signature was forged. Thus, the Courts below were in error in returning a finding that cheques in dispute had been issued in discharge of legally enforceable liability.

On the face of it, the argument appears attractive. The submission is also supported by a perusal of the signature of the petitioner which is on record as Ex.C-2/E. The said signature does not match with the admitted signature. However, other evidence also has to be read in conjunction with the same to reach a proper conclusion. The Bank Manager, namely, Suresh Kumar (DW-1) has stated in his cross-examination that before a bearer cheque is honoured, the Branch Manager verifies the identity of the person from document such as Aadhar Card, Driving Licence or any other authentic document disclosing his identity. Only after due verification, the cheque was encashed and this is evident from endorsement of the then Branch Manager whose signature and seal exists on the reverse of the original cheque. The account statement of the complainant is on record as Ex.C-6 and the same clearly records debit of Rs.19,00,000/- on 01.02.2016 from his account. Voucher dated 01.02.2016 of the Firm-M/s Barinder Kumar & Raj Kumar is Ex.C-7 on the record. The same records advancement of Rs.19,00,000/- to the petitioner and it also bears his signature in token of receipt. The signature on Ex.C-7 matches the admitted signature of the petitioner. Thus, the only possible conclusion is that the petitioner deliberately signed in a different manner at the time of encashment of the cheque only to avoid liability. Accordingly, the argument is rejected.

In conjunction with the aforementioned argument, it has been submitted that cheques in dispute were stolen by the complainant in connivance with the bank officials. For proving this fact registration of FIR No.34 dated 01.12.2018 under Sections 419, 420, 465, 467, 468 & 471 IPC has been relied upon. The argument is, however, totally mis-conceived as registration of an FIR simplicitor does not prove fraud. Ex.C-8 is a bank document showing issuance of cheque book of 25 leaves starting with cheque No.777851 to the petitioner. The date of issuance thereof is 20.06.2015 and there is no denial whatsoever of this document. This document has been produced from the record of the bank and thus, its authenticity cannot be doubted. Cheque Ex.C-1 is numbered 777851 which is the first cheque in the cheque book. If, the submission of the petitioner is to be believed, the cheque book was taken by the complainant in connivance with the bank officials even before advancement of the loan with a view to falsely implicate the petitioner in a cheque bounce case. Such an inference is too far-fetched, especially when, the petitioner has not alleged any deep rooted enmity with the complainant. In addition, it needs to be recorded that the signature of the petitioner on the cheque Ex.C-1 is not at variance with his admitted signature. This fact reinforces the finding returned earlier that the petitioner deliberately affixed a wrong signature on the rear of cheque dated 01.02.2016 so that receipt of money from the complainant could be contested at a later stage.

It has also been argued that the complainant was not a licensed money lender and thus, the money advanced by him could not be recovered as it was an illegal act. For this purpose, reliance has been placed upon **Balbir Singh Vs. Raj Krishan, 2015 (2) RCR (Criminal) 812** and judgment dated 02.08.2022 passed in Criminal Revision Application No.394 of 2015 titled as **Mrs. Monica Sunit Ujjain Vs. Sanchu M. Menon and others** passed by the Bombay High Court. Both these judgments are not applicable and thus, the argument is rejected. In **Balbir Singh (supra),** it has been held that agricultural loan can only be advanced by a licensed/registered money lender under the Punjab Money Lender's Act, 1938 and advancement of such a loan by a person who was not so licensed was illegal. The present case is not one of agricultural loan. The complaint has specifically stated that the money was advanced for clearing the liability of the father towards Indian Overseas Bank and for his medical treatment. In the case decided by the Bombay High Court, MOU executed between the money lender and the agriculturist was declared to be illegal as the lender was not duly licensed. The fact that MOU was issued showed that the complainant therein was a money lender. This situation does not exist in the instant case. Moreover, this argument strikes at the foundation of the primary argument that money was never advanced and that cheque issued by the petitioner had been forged in connivance with the bank officials. It is thus, clear that the argument has been raised by way of desperation. It is, accordingly, rejected.

Finally, it has been submitted that an FIR having been registered against the complainant, the proceedings thereof should have transferred to the Court, where, proceedings under Section 138 of the Act were pending. For this purpose, reliance has been placed upon order dated 28.02.2020 passed by the Supreme Court in Criminal Appeal No.317 of 2020 (Arising out of SLP (Criminal) No.3431 of 2018) titled as **Shri Pareshbhai Amrutlal Patel and others Vs. State of Gujarat and another.** This argument is also mis-conceived. In the said case, an FIR had been registered against the complainant in a cheque bounce case and a petition was filed under Section 482 Cr.P.C. for quashing of the same.

This petition was dismissed and the order of the High Court was challenged before the Supreme Court. Under the circumstances, it was directed that proceedings in the FIR case be transferred to the Court, where, proceedings under Section 138 of the Act were pending. No quashing petition has been filed in the instant case and the complaint under Section 138 of the Act has already been decided. Thus, no direction as suggested by learned counsel for the petitioner can be issued. Moreover, the order aforementioned does not lay down any law that every case of registration of FIR against the complainant must be transferred to the Court, where, the complaint under Section 138 of the Act is pending. Even on principle, the petitioner could not have sought the transfer of the case arising out of FIR got registered by him.

The revision petitions have no merit and are dismissed.

A photocopy of this judgment be placed on the files of the other connected cases.

(SUDHIR MITTAL)
JUDGE

01.02.2023
Ramandeep Singh

Whether speaking / reasoned Yes

Whether Reportable Yes