

216 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-442-2020 (O&M)
Decided on:-24.02.2023

CHANDER MONGA

....Petitioner

vs.

NARINDER SINGH AND ANOTHER

....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Manu Loona, Advocate, for the petitioner.

HARKESH MANUJA J. (Oral)

By way of present revision petition challenge has been made to judgment dated 27.01.2020 passed by Additional Sessions Judge, Fazilka; whereby the judgment of conviction and order of sentence dated 06.09.2016 passed by SDJM, Abohar, convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentencing him to undergo rigorous imprisonment for a period of 1 ½ year along with fine of Rs.1000/- and in default of payment of payment of fine to further undergo simple imprisonment for one month, has been upheld.

The facts of the case are that a cheque bearing No.001946 dated 20.01.2014 for a sum of Rs.4,50,000/-/- was issued at the instance of petitioner, in favour of complainant/respondent No.1 to repay the amount outstanding against him. Since the cheque was dishonoured, therefore, a criminal complaint bearing No.NACT-531-2014 dated 12.03.2014 came to be filed against the petitioner resulting into conviction, besides awarding the aforementioned sentence.

Aggrieved thereof, the petitioner filed first appeal before the learned Additional Sessions Judge, Fazilka, which was also dismissed vide judgment dated 27.01.2020 upholding the judgment of conviction and order of sentence passed by the trial Court. Challenging the aforesaid judgments, present revision petition has been filed.

Learned counsel for the petitioner submits that in fact the cheque in question was given as security on account of loan taken by one Vikramjeet Singh from the complainant, which has been misused and therefore, there was no legally enforceable debt against him. Further, an effort has also been made to question the financial capability of the complainant as well.

I have heard learned counsel for the petitioner and gone through the paper-book. I find no substance in the contentions raised on behalf of the petitioner.

The contentions raised on behalf of the petitioner were considered and rejected by the trial court upon discussion of entire evidence in detail in the following manner:

“Now in the present case the complainant has placed on record the original cheque dated 20.1.2014 as Exh.C1 which is for an amount of Rs.4,50,000/-, bank memo dated 28.1.2014 as Exh.C2 vide which the cheque was got dishonoured due to the funds being insufficient in the account of the accused and further the complainant has proved on record the legal notice dated 5.2.2014 as Exh.C3 and UPC receipt as Exh.C4. The present complaint has been filed on 12.3.2014 i.e., within limitation period after the service of legal notice. So the complainant has proved all the ingredients of the complaint filed under Section 138 of Negotiable Instrument Act by him. Now in order to rebut the presumption raised against the accused, the accused has taken the plea that the complainant has misused the cheque in question which was lying with him as security for the loan taken by Vikramjit Singh. To support his contention he has further placed on record the copy of complaint titled as Narinder Singh Vs. Vikramjit Singh as Ex. D-1 and copy of the statement of complainant Narinder Singh suffered in the said case. However, the said documents are not sufficient to prove on record that the cheque in question was given by accused Chander Monga as a security for the loan taken by Vikramjit Singh from the complainant. Further the statement relied upon by the accused himself which is of complainant in case titled as Narinder Singh Vs. Vikramjit Singh itself transpires that the accused is taking con-

tradictory stand as in that case the question has been asked that “Chander Monga has handed over the cheque of Vikramjit Singh to the complainant.” While in the present case the stand taken by the accused is that he gave the cheque in question for security of the loan taken by Vikramjit Singh. While on the other hand Vikramjit Singh is alleging that his cheque has been handed over by Chander Monga to complainant. Moreover, the accused has not examined Vikramjit Singh as witness in the present case to support his contention. So, the accused clearly failed to even prima facie prove his defence which was necessary for rebutting the strong presumption raised against the accused as per Section 139 read with Section 118 of Negotiable Instruments Act.”

12. Further as regards the capability of complainant to advance an amount of Rs.4,50,000/-. In this regard, even though the complainant in his cross-examination has admitted that his annual income is only Rs.1,75,000/- from the agricultural land which is under his ownership but he has further clarified that his father is also holding land which is approximately 50 acres and the J form produced on record by the complainant as Ex. C-5 to Ex.C-30 transpires that the entire crop is being sold by the complainant through his commission agent and the value of the same is more than Rs.40-50 lacs. So, this shows that the complainant is selling his own produce as well as the produce of his father from the joint income he was certainly in a position to advance an amount of Rs.4,50,000/- to the accused. So, this arguments also does not carry any weight.”

Despite of specific query put to the learned counsel for the petitioner, neither he has been able to explain the observation made by the Court below, nor he has been able to point out any material brought on record to substantiate his contentions. From the evidence available on record, the respondent-complainant has duly proved his financial capacity. On the contrary, the petitioner having not disputed his signatures on the cheque, has failed to rebut the presumption attached to it. Thus, finding no illegality or perversity in the findings recorded by the courts below, the present revision petition is dismissed being devoid of merits.

Resultantly, the petitioner who failed to submit himself to the jurisdiction of the first appellate court at the time of final decision, be taken in custody, to undergo the period of sentence awarded to him.

24.02.2023

sonika

(HARKESH MANUJA)**JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/ No