

236 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-461-2008

Date of Decision:01.08.2023

Sugan Chand

...Petitioner

Vs.

Balram Kumar Sharma and Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Balbir Singh Jaswal, Advocate
for the petitioner.

Mr. D.S Pheruman, Advocate
for respondent.

Mr. Mohit Chaudhary, AAG, Punjab.

N.S.Shekhawat J.

1. The present revision petition has been preferred against the judgment dated 23.02.2008 passed by the Court of Learned Sessions Judge, Amritsar and the judgment and order dated 18.11.2006, passed by the Court of Learned Judicial Magistrate Ist Class, Amritsar, whereby the present petitioner was ordered to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 5000/-, along with default stipulation.

2. As per the respondent No.1/complainant, the petitioner/accused had taken a loan of Rs.70,000/- for his domestic need and in discharge of his legal liability, the petitioner had issued two cheques i.e (i) no. 462720 dated 16.03.2004 for Rs.35,000/- and (ii) no. 462719 dated 01.04.2004 for a sum of

Rs.35,000/- in favour of the respondent No.1/complainant, which were drawn on Punjab National Bank, Majitha Road, Amritsar. The petitioner had assured the respondent that both the cheques will be honoured on presentation in the bank. However, when the cheques were presented for encashment, both the cheques were received back dishonoured vide the memo dated 05.04.2004 with the remarks “insufficient funds”. A legal notice dated 07.04.2004 was got issued by the respondent No.1, but despite that, the petitioner failed to make the payment of the dishonoured cheques and the respondent No.1 and 2 present the complaint before the learned Judicial Magistrate, First Class, Amritsar.

3. In the evidence, the respondent No.1/complainant examined CW-1 Shri Rakesh Kumar, Record Keeper, PNB Branch Majitha Road, Amritsar and examined himself as CW-2. The statement of the petitioner was recorded under Section 313 Cr.PC and all the incriminating evidence appearing against him was put to him. However, the petitioner denied the evidence and submitted that he was falsely involved in the present case. To prove his defence, the petitioner examined DW-1 Shri Jagdeep Singh, Collection Manager, ICICI Bank, Ranjit Avenue Amritsar and closed his evidence in defence.

4. I have heard learned counsel for the parties and with their able assistance; I have perused the record.

5. At the very outset, learned counsel for the petitioner submits that he does not wish to challenge the judgment of conviction and since the petitioner is the sole bread earner of the family and is aged about 70 years, a lenient view may be taken while awarding the sentence to the petitioner. Even though the learned counsel for the petitioner does not wish to challenge the impugned judgments, still this court has examined the case on merits and found

no grounds to interfere with the same.

6. To prove the charge, against the petitioner, the respondent No.1/complainant examined CW-1 Shri Rakesh Kumar, Record Keeper, PNB Branch Majitha Road, Amritsar who had brought the summoned record about the return of cheque No. 9237 of Rs.35,000/- dated 01.04.2004, issued by the petitioner in favour of respondent No.1 and the other cheque of Rs.35,000/- dated 16.03.2004, issued by the petitioner in favour of respondent no.1. He further testified the cheques were returned uncashed on account of “exceeds arrangements” and also produced the certified copy of the statement of account Ex.C.1 and memo Ex.C.2 and respondent No.1/complainant further examined CW-2 Balram Kumar, who tendered his affidavit Ex.CW-2. Both the witnesses were subjected to cross-examination, but the petitioner could not elicit anything, which could shatter their testimonies in their defence in any manner. From the evidence, this Court comes to the firm conclusion that the petitioner had borrowed a sum of Rs. 70,000/- from the respondent No.1 and all the ingredients of the offence under Section 138 of the Negotiable Instruments Act were complete in the present case. This Court has gone through the findings recorded by learned courts and find no reasons to deviate from the same. Even otherwise, learned counsel for the petitioner chose not to challenge the impugned judgment of conviction and no illegality or perversity could be found in the impugned judgments of conviction and the impugned judgment dated 23.02.2008 passed by the Court of Learned Sessions Judge, Amritsar and the judgment and order dated 18.11.2006 passed by the Court of Learned Judicial Magistrate Ist Class, Amritsar, are ordered to be upheld.

7. Vide the impugned order of sentence dated 18.11.2006 passed by

learned Judicial Magistrate First Class, Amritsar, the petitioner was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/- The said order of sentence was ordered to be upheld by the Ist Appellate Court. During the course of Court hearing, a custody certificate has been produced by the learned State counsel and as per the said custody certificate, the petitioner has already undergone 01 month and 17 days of actual sentence out of total sentence of 01 year. Apart from that, it is also apparent that at the time of recording of the statement under Section 313 Cr.P.C. on 27.05.2006, the petitioner was aged about 52 years. Consequently, as on today the petitioner is aged about 69 years and is a senior citizen. Apart from that, the petitioner has faced agony of the trial/appeal for the last more than 19 years. Learned counsel for the petitioner submits that the petitioner has six daughters and is the sole bread earner of the family. Keeping in view the aforesaid facts, a lenient view is taken in the present case and the sentence imposed on the petitioner is reduced to the period already undergone by him. However, the amount of fine is enhanced from Rs.5000/- to Rs.70,000/-, which shall be deposited by the petitioner with the Court of learned CJM, Amritsar within a period of 03 months from today and the learned CJM, Amritsar is directed to disburse the aforesaid amount of fine of Rs.70,000/- to the respondent No.1 against receipt and proper identification.

8. In view of the above, the present revision is partly allowed and as a consequence, and the impugned judgment of conviction dated 18.11.2006 passed by the Court of Learned Judicial Magistrate Ist Class, Amritsar, is ordered to be upheld, however, the order of sentence passed by Learned JMFC is modified to the extent as indicated above.

9. In case, the petitioner does not deposit the enhanced amount of fine within a period of three months from today, the present petition shall be deemed to be dismissed.

01.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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