IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1007-2010 (O&M)
Date of Decision: April 21, 2023

1.

Sarabjit Singh and another …Petitioners
Versus
State of Punjab and another …Respondents

2. CRR No.1008-2010 (O&M)

Sarabjit Singh and another …Petitioners
Versus
State of Punjab and another …Respondents

3. CRR No.1040-2010 (O&M)

Sarabjit Singh and another …Petitioners
Versus
State of Punjab and another …Respondents

4. CRR No.1045-2010 (O&M)

Sarabjit Singh and another …Petitioners
Versus
State of Punjab and another …Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Mukand Gupta, Advocate for the petitioners.

Mr. Parneet Singh Pandher, AAG, Punjab.

Mr. Pankaj Kundra, Advocate for
Mr. Deepak Sabharwal, Advocate for respondent No.2.

DEEPAK GUPTA, J.

This order shall dispose of four revision petitions titled above, as issue involved in all these cases pertains to same transaction and as in all the cases, same facts and question of law are involved.

2. The facts are taken from CRR N: 1007-2010 (O&M). The revision is against the order dated 15.03.2010 passed by learned Addl.

Sessions Judge (Fast Track Court), Patiala, upholding the judgment/order dated 09.06.2006 passed by learned Judicial Magistrate 1st Class, Samana, convicting petitioner No.1 under Section 138 of the Negotiable Instrument Act, 1881, and sentencing him to undergo imprisonment for a period of 1 year and to pay a fine of ₹2,500/-.

3. Respondent No.2 Federation filed the complaint against petitioner No.2-M/s Sardar Exports Ltd., Samana, and its Director Sarabjit Singh (petitioner No.1) alleging that paddy was issued to the accused by the Markfed, Patiala for milling purposes for the year 1997-98. Out of 197 wagons delivered to the accused, they failed to deliver 52 wagons of rice and as security, issued 8 cheques, including four cheques involved in these cases, drawn at Punjab National Bank, Samana. On presentation, the cheques were dishonoured on the ground that there were "no sufficient funds" in the account for encashment and further that accused No.2 (petitioner No.1) Sarabjit Singh did not have the authority to issue the cheques, as the same had already been drawn. Legal notice was sent to pay the amount, but in vain and hence the complaints were filed to prosecute the accused under Section 138 of the N.I. Act. After holding the trial, accused were convicted by the Judicial Magistrate 1st Class, Samana and said conviction has been upheld by the Appellate Court.

4. It is contended by learned counsel that Courts below failed to appreciate that 8 separate cheques including 4 cheques in the aforesaid cases, all drawn at Punjab National Bank, Malkana, Patiala, were allegedly issued in favour of the complainant. On dishonour of all these cheques, 8 separate complaints were filed. 4 complaints landed in one Court for disposal, whereas four complaints were assigned to another

Court. In 4 complaints, acquittal of the accused-petitioner has been recorded, which has been upheld till Hon'ble Supreme Court. Learned counsel contends further that the Courts below failed to take into account the factual aspect that petitioner No.1 did not have the authority to issue the cheques in question, as the same had already been drawn on 04.01.1999, regarding which intimation had been forwarded to the banker i.e., Punjab National Bank on 06.02.1999 and cheques were issued after this date. Apart from this, Courts below failed to take note of the fact that serving of the legal notice, which is pre-requisite for filing of complaint under Section 138 of the N.I. Act, was not proved on record as no postal receipt was produced to show the sending of the notice. Courts below failed to take into account the fact that cheques were not issued to discharge any debt or liability and rather, the same were issued as security, with an understanding that as and when the rice is delivered, the cheques shall be taken back. With these submissions, prayer is made for setting aside the impugned judgments of conviction and order of sentence.

5. Learned counsel for the respondent-complainant opposed the revisions, though did not dispute the factual position that 8 different complaints were filed regarding dishonour of 8 cheques, which were issued in respect of the same transaction. He has also not disputed the fact that in 4 complaints, acquittal was recorded by the Court of Magistrate, which findings have been upheld till the Hon'ble Supreme Court.

6. Having considered submissions of both the sides, I find merit in all these revisions.

7. CRM-455-MA to CRM-458-MA of 2006 were preferred by the complainant-respondent of the cases before this Court against

acquittal of the petitioner in four complaint cases. All these 4 CRM-MA(s) were disposed of by this High Court vide order dated 21.01.2018. It will apt to reproduce the relevant portion of the said order, which reads as under: -

> *"The facts of the present case are that the appellant had filed a complaint under section 138 of the Negotiable Instruments Act for prosecuting the accused-respondents on the plea that the cheques issued by them have been dishonoured. In order to prove that the cheques issued were for consideration and for discharge of existing debt an affidavit was stated to have been filed by Sarabjit Singh, Director of M/s Sardar Exports Limited, Samana, District Patiala.*
>
> *The reading of the affidavit Annexure P-8 which has been filed with the present appeal shows that a sped fie averment was made in the said affidavit that the accused-respondents were giving cheques as security to Markfed for above said undelivered wagons. It was also said that the cheques would be taken back by the accused one by one after delivering the rice against the said individual cheques. Thus, it would be seen that even if the affidavit is taken on record which is sought to be proved by way of additional evidence, it rather goes against the petitioner herein as the cheques would be deemed to have been issued as a security and not as a discharge of debt.*
>
> *Learned trial court has also come to the conclusion that there was a arbitration clause between the parties and dispute was yet to be adjudicated and therefore, there was no existing debt on the date when the cheques were issued. It has also been recorded by the learned trial court that prior to the issuance of cheques and the affidavit an FIR had been lodged against the accused persons by the petitioner and thus, it was during the pendency of criminal proceedings that these cheques were taken. It has also been mentioned therein that after the cheques were dishonoured the petitioner chose not to issue notice to the firm which could be said to be under legal liability, if any. Thus, it would be seen that the evidence sought to be produced by way of additional evidence would not be relevant or required for just and proper*

adjudication of the case. Thus, there is no merit in the present application which is liable to be dismissed.

The findings recorded by the learned trial court can not be said to be perverse or patently illegal so as to invoke the jurisdiction of this court for leave to appeal as it is not in dispute that the basis of the present complaint was Annexure A.8 i.e. the affidavit owing the liability and in pursuance to which cheques were said to have been issued as' security, which stood dishonoured.

No merit. Dismissed."

8. Against the aforesaid order passed by this Court, complainant-respondent preferred criminal appeals No.2178-2181/2010 before the Hon'ble Supreme Court, which was dismissed, vide a common order dated 09.06.2016, which reads as under: -

"We have heard the learned counsel appearing for the appellant at length.

On a careful consideration of the matter, we do not find any reason to interfere with the impugned Judgment and Order dated 21-1-2008 passed by the High Court of Punjab and Haryana.

In view of that, we find no merit in the appeals filed by the appellant-Punjab State Co-operative Supply & Marketing Federation Limited.

Accordingly, the Criminal Appeals are dismissed."

9. Once the factual position is not under dispute that all the cheques had been issued regarding the same transaction, in respect of which 8 complaints were filed and acquittal was recorded in 4 of them, which has been upheld up to the Hon'ble Supreme Court, there can be no hesitation to conclude that impugned judgments/orders of conviction as recorded in all these four revisions by the Courts below, are not sustainable.

10. Consequently, for the same reasons as have been discussed by this Court in its order dated 21.01.2008, the relevant portion of which has already been reproduced above, all the present revisions are hereby

accepted. The impugned judgments of conviction and order of sentence passed by the Courts below, are hereby set aside.

April 21, 2023 **(DEEPAK GUPTA)**
Sarita **JUDGE**

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