IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1557-2010 (O&M)
Date of Decision: 01.02.2023

GIAN MITTAL

... Petitioner

Versus

STATE OF PUNJAB & ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. N.S. Sodhi, Advocate
for the petitioner.

Mr. Maninder Singh Bajwa, DAG, Punjab.

Mr. Rajinder Goyal, Advocate
for respondent No.2-SBI Bank, Baghapurana.

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JASJIT SINGH BEDI, J.

The instant revision petition has been preferred against the order dated 13.05.2010 passed by the Additional Sessions Judge, Moga vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 07.02.2007 passed by the Judicial Magistrate, 1st Class, Moga has been dismissed.

2. The brief facts of the prosecution case are that a letter No.3123-R S.P. (H) dated 16.12.1992 was received on the basis of which a case was got registered against the accused. In the letter it was averred that Gian Mittal (petitioner) son of Ram Bhagat, resident of Channuwala Road, Baghapurana and the sole proprietary concern through Sh. Gian Mittal had availed a cash credit hypothecation limit from the State Bank of India, Baghapurana. The

cash credit Hypothecation Account number was 3/25 Smt. Kamla Devi and Sh. Phool Chand, the mother and the brother respectively of Sh. Gian Mittal had saving Bank account No.9452/46 and 6337/30 respectively. On 30.11.1987 Mr. Gian Mittal posing himself as Bal Mukand son of Sh. Ram Bhagat opened a saving bank account No.3926/14 with Oriental Bank of Commerce, Faridkot. Mr. Gian Mittal also maintained accounts with Punjab National Bank, Moga and Moga Central Co-operative, Bank, Moga etc. Mr. Gian Mittal himself and in the name of Bal Mukand, issued cheques from the above said saving bank accounts in the name of his mother, brother, himself and Swami Printing Press. All these cheques were presented in State Bank of India, Baghapurana. Mr. D.R. Chawla, the then Accountant in State of Bank of India, Baghapurana presently residing at near Gurdwara Akalsar, Rattan Cinema Road, Moga was hand in gloves with Gian Mittal. Both of them had conspired with the common intention to enrich themselves by committing forgery, fraud and cheating etc. Mr. D.R. Chawla, in furtherance of the common intention allowed these cheques to be purchased on the concerned saving bank/current accounts and were credited. Mr. Gian Mittal withdrew the amount from these accounts. All these cheques presented for purchase were ultimately dishonoured by the drawee banks and were sent back to State Bank of India, Baghapurana. But Mr. D.R. Chawla did not bring this matter to the notice of the Branch Manager. Mr. Chawla, in fact, kept back these cheques in furtherance of their ulterior design to cheat the bank. The whereabouts of these cheques except a cheque for Rs.12,000/- were best known to Sh. D.R. Chawla and Gian Mittal. By their common act of fraud and cheating, the Bank had suffered a huge monetary loss. It was, therefore, prayed that an FIR in this regard be registered with copy thereof to the informant. Necessary action/investigation was sought against the concerned persons. On the basis of the letter legal opinion of D.A. Legal was obtained and case under Section 420/467/468/419/471/120-B IPC was registered against accused Gian Mittal son of Ram Bhagat, Phool Chand Mittal and Des Raj Chawla. Kamla Devi wife of Ram Bhagat was declared innocent.

3. As per the prosecution, on 30.11.1987 accused/petitioner Gian Mittal by impersonating himself as Bal Mukand, after depositing Rs.100/- got opened his Saving Account No.3926/14 with Oriental Bank of Commerce, Faridkot. Gian Mittal by impersonating as Bal Mukand issued 7 cheques of various amounts in favour of Gian Mittal, Kamla Devi, Phool Chand Mittal and M/s Swami Printing Press in their saving accounts at State Bank of India, Baghapurana. These cheques were presented at State Bank of India, Baghapurana through D.R. Chawla, Accountant. The details were as under:-

Sr. No.	Date of DD	Amount	Particulars of disco under	Cheque No.	Collecting Branch	Drawee Bank
1.	390-2-5-88	2440/-	Kamla Devi W/o Ram Bhagat SBI No.AC9452/46	962577	FDK	-do-
2.	637-19-1089	2000/-	Gian Mittal S/o Ram Bhagat SB A/c No.9042/43	764094	-do-	-do-
3.	1105-7-3-90	6120/-	-do-	764097	-do-	-do-

4.	648-24-10-89	1520/-	Swami Printing Press sole prop. Gian Mittal SB A/c No.3/25	764095	-do-	-do-
5.	156-14-5-90	12000/-	-do-	764098	-do-	-do-
6.	1339-10-12-87	2500/-	Gian Mittal	300788	Moga	Moga Central Co. Op. Bank
7.	1039-2-9-87	7000/-	Phool Chand SB A/C No.6337/30	580232	Moga	PNB Partap Road, Moga

These amounts were credited in the names of the above referred persons and cheques were issued for realization. After that the cheques were dishonoured. In this way Gian Mittal and D.R. Chawla, Accountant in connivance with each other got deposited money in the saving account of Gian Mittal being the proprietor of Kamla Devi and Phool Chand Mittal and M/s Swami Printing Press. All the accused, for their benefit, in connivance with each other with dishonest intention committed cheating. After dishonour of cheques when it was returned to State Bank of India, Baghapurana, D.R. Chawla dishonestly concealed these cheques from the other bank officials and misappropriated/embezzled the amount in connivance with Gian Mittal. Dr. D.R. Chawla, Accountant died on 19.04.1994. During investigation, it was revealed that Gian Mittal and D.R. Chawla with dishonest intention committed fraud with Oriental Bank of Commerce, Faridkot by opening four bogus saving accounts and got transferred amounts in his account and in the account of his other relatives. Thus, he embezzled the amount by adopting illegal means and further misappropriated the cheques in order to save himself from further action. After taking the signatures of Gian Chand Mittal, the same were sent to Forensic Science Lab. Chandigarh. Statements of prosecution witnesses under Section 161 Cr.P.C. were recorded. Documents were taken into possession vide separate recovery memos. After completion of investigation challan under Sections 420/467/468/419/471/120-B IPC was presented in the Court.

4. On presentation of challan in the Court, copies of all the documents relied upon by the prosecution were supplied to the accused free of cost as required under Section 207 Cr.P.C.

5. On finding a prima case, charge under Sections 120-B/419/420/467/471/120-B IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined PW-1 Omkar Singh L.D. Of Oriental Bank of Commerce, Ferozepur, PW2-K.K. Jaiswal, Manager, Oriental Bank of Commerce, Bhawangarh District Sangrur, PW3-Swatantar Kumar Mittal, PW4-Gulzar Singh, PW5-Sh. S.N. Monga, Manager, Oriental Bank of Commerce, Moga, PW6-S.S. Kakkar, Deputy Manager of Oriental Bank of Commerce, PW7-Satish Monga, Branch Manager, Oriental Bank of Commerce, Muktsar, PW8-Sham Lal Jindal, PW9-Amrit Lal, Cashier, State Ban of India, Baghapurana, PW10-Manmohan Arora, Deputy Manager, State Bank of India, Majestic Road, Moga, PW11-Paramjit Singh, Chief Manager, Officer, Amritsar, PW12-C. Jagjit Singh, and PW13-Surjit Singh, Manager, Regional Office, Oriental Bank of Commerce, Amritsar. No other witness was examined by the prosecution.

7. The statement of the accused was recorded under Section 313 Cr.P.C. wherein all the incriminating circumstances appearing against the accused were put to them to which the accused pleaded innocence and claimed false implication.

It was stated by accused Phool Chand that he was innocent and he had been falsely implicated in the present case by the bank officials in order to save Dr. D.R. Chawla who had played fraud and he had embezzled the bank amount by opening accounts in the name of his sons and their firm. The Bank officials had given false evidence to save their collegues. So was stated by accused Gian Mittal and in addition to this, it was stated that he had business dealing with Bal Mukand resident of Faridkot who used to give him cheques from time to time.

8. In defence, the accused examined DW1-Bhupesh Chand Tiwari, Computer Clerk of the office of Civil Surgeon, Moga DW2-Sh. Ram Niwas who tendered certified copy of judgment dated 16.02.2001 passed by Mrs. Mandeep Kaur, the then Civil Judge (Jr. Division), Moga in civil suit titled as State Bank of India Versus G.R. Chawla and others as Ex.D1 and copy of decree sheet Ex. D1/A and further tendered the character certificate of Gian Chand issued by Govt. Higher Secondary School, Mehtabgarh, District Faridkot, Photostat copy of matric certificate Ex. D4, copy of plaint in civil suit titled as State Bank of India Versus D.R. Chawla Ex.D5 and closed his evidence.

9. Based on the evidence led, the petitioner and his co-accused Phool Chand came to be convicted and sentenced by the Court of Judicial Magistrate, 1st Class, Moga as under:-

Name of accused	Sections	RI	Fine	In default of payment
1. Gian Mittal 2. Phool Chand	419 IPC 419/120-B IPC	03 years 03 years	Rs.1000/- Rs.1000/-	01 month 01 month
1. Gian Mittal 2. Phool Chand	419 IPC 419/120-B IPC	12 years 12 years	Rs.1000/- Rs.1000/-	01 month 01 month
1. Gian Mittal 2. Phool Chand	467 IPC 467/120-B IPC	03 years 03 years	Rs.1000/- Rs.1000/-	01 month 01 month
1. Gian Mittal 2. Phool Chand	471 IPC 471/120-B IPC	03 years 03 years	Rs.1000/- Rs.1000/-	01 month 01 month

All the sentences were ordered to run concurrently.

10. Aggrieved by the judgment and order of sentence dated 07.02.2007 passed by the Trial Court, an appeal was preferred which came to be dismissed by the Court of Additional Sessions Judge, Moga. The Appellate Court, however, while acquitting Phool Chand upheld the conviction of the petitioner but modified the sentence as under:-

Under Sections	R.I.	Fine	In default of payment
419 IPC	R.I. for 01 year	Rs.1000/-	R.I. for 01 month
420 IPC	R.I. for 01 year	Rs.1000/-	R.I. for 01 month
467 IPC	R.I. for 18 months	Rs.1000/-	R.I. for 01 month

471 IPC	R.I. for 18 months	Rs.1000/-	R.I. for 01 month

Still aggrieved, the present revision petition has been preferred against the aforementioned judgments.

11. The learned counsel for the petitioner contends that the Courts below failed to appreciate that except for PW8-Sham Lal all other prosecution witnesses were official witnesses. They merely proved the documents maintained by the Bank and the said documents were not enough to record a conviction against the petitioner. PW8-Sham Lal Jindal who is alleged to have identified the petitioner cannot be believed as a perusal of his entire testimony would show that he did not know the petitioner. He contends that the testimony of PW7-Satish Monga who remained posted at Oriental Bank of Commerce, Faridkot on 30.11.1987 was also not sufficient to convict the petitioner. In the absence of his cross-examination, his examination-in-chief alone amounted to an incomplete statement and therefore the same could not be read in evidence. He also contends that the State Bank of India had filed a civil suit against D.R. Chawla, Accountant of their Bank (since deceased) along with the other accused. The said civil suit was dismissed. Therefore, once the Civil Court had come to a finding that no amount had been defalcated, criminal proceedings could not be continued. It is thus, his case, that the petitioner ought to be acquitted of the charges framed against him.

12. On the other hand, the learned State counsel duly supported by counsel for respondent No.2-SBI Bank, Baghapurana contend that the evidence as led by the prosecution is sufficient to affix liability upon the

petitioner. The grounds raised by the petitioner have been considered during the course of Trial as also at the stage of the appeal. No legal argument has been raised by the petitioner so as to warrant interference by this Court. They thus, contend that the revision petition was liable to be dismissed.

13. I have heard the learned counsel for the parties.

14. In the present case, PW8-Sham Lal Jindal testified to the effect that the petitioner-Gian Mittal came to him in the year 1987 and made a request that he intended to get a saving bank account opened at the Oriental Bank of Commerce. He along with the petitioner went to the bank and filed an application, Ex.P5. He has categorically stated that the petitioner had appended his signatures as Bal Mukand. He identified the signatures of the petitioner in person signing as Bal Mukand as Ex.P7/A, Ex.PW7/B and Ex.PW7/C. He has clearly identified the petitioner as Bal Mukand stating that the accused Gian Mittal used to visit his shop but his full name was not known to him (this witness). Further, the prosecution has examined PW7-Satish Kumar Monga, who has stated that he met Gian Chand Mittal. He got opened the bank account of the petitioner, who affixed his signatures on the account opening form Ex.P5 at point Ex.P7/A to Ex.PW7/C. He also identified the signatures of Sham Lal Jindal (PW-8) at point PW7/D and Ex.PW7/E on the said account opening form. Thus, apparently, from the testimony of PW7-Satish Kumar Monga and PW8-Sham Lal Jindal, it is clear that the petitioner impersonated himself as Bal Mukand and got opened his savings bank account at the Oriental Bank of Commerce, Faridkot and got cheques issued in his own favour. It also stands established that the

petitioner, Phool Chand his brother (since acquitted) and their mother Kamla Devi also had saving bank accounts in their own names at the State Bank of India, Baghapurana and in the name of M/s Swami Printing Press of which the petitioner was a proprietor. From the deposition of PW10-Manmohan Arora, who was posted at the State Bank of India, Baghapurana, Branch it is established that the petitioner Gian Mittal by impersonating himself as Bal Mukand got issued cheques in his own name and in the names of Phool Chand, Kamla Devi and M/s Swami Printing Press on the cheque book issued by the Oriental Bank of Commerce, Faridkot and the same were presented by him before the State Bank of India, Baghapurana through Des Raj Chawla, Accountant (since deceased).

It is also evident from the record that the cheques were presented before the Bank from time to time and the amount of such cheques was credited in the saving bank account of the petitioner and in the account of M/s Swami Printing Press. In fact, there was no amount in the account of Bal Mukand and the cheques were got dishonoured. This fact was concealed by Des Raj Chawla. From the evidence on record, it is also clear that cheque books were issued by the bank authorities to the accused/petitioner. The contention of the counsel for the petitioner that vide judgment Ex.D1 dated 16.02.2001, the civil suit for recovery filed by State Bank of India, Baghapurana against Des Raj Chawla, Accountant and others had been dismissed and therefore, the present proceedings were not maintainable is fallacious. The judgment in the civil suit was rendered because the plaintiff had failed to prove as to whether the legal representatives of Des Raj Chawla (defendant No.1 in the said case) had committed any fraud and on the point of limitation.

15. Keeping in view the aforementioned, discussion it is apparent that the prosecution has been able to establish the guilt of the petitioner without reasonable doubt.

16. In view of the above, I find no reason to interfere in the well-reasoned judgments of the Courts below. Therefore, the present petition is hereby dismissed.

17. So far as imposition of sentence is concerned, the petitioner is stated to be of the age of 63 years now. The occurrence pertains to the year 1992 and the petitioner is a first-time offender. As per the custody certificate dated 24.01.2023, he has undergone a total custody period of 02 months and 09 days. A sum of Rs.50,000/- already stands paid vide order dated 19.07.2010 when the sentence of the petitioner was suspended. Therefore, I deem it appropriate to modify the substantive sentence of imprisonment and reduce it to the period already undergone by him. The quantum of fine stands modified as under:-

Under Sections	**R.I.**	**Fine**	**In default of payment**
419 IPC	Period undergone (02 months and 09 days)	Rs.10,000/-	R.I. for 01 month
420 IPC	Period undergone (02 months and 09 days)	Rs.10,000/-	R.I. for 01 month
467 IPC	Period undergone (02 months and 09 days)	Rs.10,000/-	R.I. for 01 month
471 IPC	Period undergone (02 months and 09 days)	Rs.10,000/-	R.I. for 01 month

The sentences are ordered to run concurrently.

18. Out of the fine amount of Rs.40,000/-, Rs.32,000/- shall be paid as compensation in terms of Section 357 Cr.P.C. to respondent No.2-SBI Bank, Baghapurana (Branch concerned). The sentence in default shall remain intact.

(JASJIT SINGH BEDI)
JUDGE

01.02.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No