IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1876-2016 (O&M)
Date of Decision: 17.05.2023

M/s Virk Cotton Factory

... Petitioner

Versus

Axis Bank Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. L.S. Sidhu, Advocate, for the petitioner.

Mr. Deepak Jain, Advocate, for the respondent.

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JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 24.02.2016 passed by the Additional Sessions Judge, Bathinda whereby the appeal filed against the judgment of conviction and order of sentence dated 10.02.2015 passed by the Judicial Magistrate Ist Class, Bathinda has been dismissed.

2. The brief facts of the case are that the accused-petitioner Shahbeg Singh (hereinafter known as 'the accused'), proprietor of M/s Virk Cotton Factory, approached the complainant-respondent Bank (hereinafter known as 'the complainant') and applied for the grant of loan in the nature of a credit facility under the commodity power scheme i.e. credit line against pledge of warehouse/ storage receipts. The same was sanctioned to the accused and he availed a credit line facility of Rs.3 crore against the pledge of stock @ 1.5% above the bank's

base rate i.e. 10.40%. The accused executed a loan agreement and other documents in favour of the complainant and assured repayment of the same. The accused issued a cheque No.454741 dated 08.01.2013 for Rs.1,15,71,919/- drawn on Canara Bank as part in favour of the complainant with assurance to honour the same. The complainant-Bank presented the same for encashment, but the same was returned dishonoured with the remark "exceeds arrangement" vide memo dated 09.01.2013. Thereafter, the complainant got served a legal notice dated 28.01.2013 upon the accused for making the payment within 15 days, but accused failed to make the payment, leading to the filing of the complaint.

2. On the basis of preliminary evidence led by the complainant, the accused was ordered to be summoned. The accused appeared and was enlarged on bail.

3. Notice of accusation under Section 138 of the Negotiable Instruments Act was served upon the accused to which the accused pleaded not guilty and claimed trial.

4. In order to prove its case, the complainant examined Manmeet Singh as CWI, who tendered his affidavit Ex.CWI/A in examination in chief wherein he corroborated the version of the complaint and proved on file Ex.C1 power of attorney, Ex.C2 loan application, Ex.C3 and Ex.C4 sanction letters, Ex.C5 demand promissory note, Ex.C6 DP note, ExC7 agreement, Ex.C8 indemnity bond, Ex.C9 loan application dated 10.02.2011, Ex C10 sanction letter, Ex.C11 demand promissory note, Ex.C12 DP note, Ex.C13 agreement, ExC14 indemnity bond. Ex.C13 legal notice dated 30.11.2012. Ex.C16 postal receipt, Ex.C17 loan recall notice, Ex.C18 postal receipt, Ex.C19 cheque, Ex.C20 memo dated

09.01.2013, Ex.C21 legal notice dated 28.01.2013, Ex.C22 postal receipt, Ex.C23 acknowledgment, Ex.C24 and Ex.C25 copy of the statement of account.

The complainant tendered copy of complaint Mark A and postal receipts Mark B and Mark C and closed the evidence.

5. The statement of the accused was recorded under Section 313 Cr.P.C. wherein the incriminating evidence was put to the accused. The accused denied all the allegations levelled against him and further pleaded that the complainant had obtained his signatures on blank cheques and had misused the same on the pretext of granting a loan. They had also taken his signatures on blank papers on the pretext of granting a loan. The complainant got pledged 1925 bales of cotton i.e. 35 lots as security but all the pledged bales had been usurped by the complainant and nothing was given to him out of the said pledged bales. The value of pledged bales was Rs.5 crores at that time. He (accused) was entitled to recover the said amount. The pledged bales were in possession of the complainant and complainant had filed a false case against him. No pledged bales had been returned to him and no accounts of bales had been furnished.

6. In defence evidence no witness was examined by the accused.

7. Based on the evidence led, the petitioner-accused came to be convicted and sentenced vide judgment dated 10.02.2015 passed by the Judicial Magistrate Ist Class, Bathinda as under:-

Offence under Sections	**Sentence RI/SI**	**Fine**	**RI/SI in default of payment of fine**
138 of N.I. Act.	(RI) 02 years	Rs.2,000/-	(RI) 02 month

8. An appeal was preferred by the accused and the same came to be dismissed vide judgment dated 24.02.2016 passed by the Additional Sessions Judge, Bathinda.

9. The present petition has been filed challenging the aforementioned judgments of the Trial Court dated 10.02.2016 as well as the Lower Appellate Court dated 24.02.2016.

10. After the filing of the present petition, on 19.05.2016, the following order was passed:-

> "*The petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881, by the learned Judicial Magistrate Ist Class, Bathinda, vide judgment of conviction and order of sentence dated 10.2.2015, as the cheque for Rs.1,15,71,919/- issued to the complainant bank was bounced. The judgment was affirmed in appeal. The learned counsel for the petitioner presses the revision only on the quantum of sentence. The learned counsel for the petitioner further seeks time to get instructions from his client as to whether the accused is willing to pay the entire cheque amount alongwith interest as per the judgment of the Hon'ble Supreme Court of India in Damodar S. Prabhu Versus Sayed Babalal H., 2010 (5)SCC 663.*
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> *List on 14.7.2016".*

11. The learned counsel for the petitioner has stated that the petitioner was unable to make the payment of the entire cheque amount alongwith the interest, and therefore, though the revision petition was pressed on the quantum of sentence alone, he wished to address the Court on merits as well.

12. The learned counsel for the petitioner contends that the complainant had failed to prove that the cheque in question had been issued by the accused in the discharge of a legal liability. There was no evidence to suggest that the accused owed any amount to the complainant-Bank as adequate security i.e. pledging of stock/storage receipts was lying with the complainant-Bank, and therefore, no amount was due from the side of the petitioner towards Bank. In fact, the theft of the pledged articles had taken place and the complainant-Bank had failed to prove on record as to who had committed the theft. He contends that there were material discrepancies in the statements of the witnesses which had been ignored by the Trial Court and the Lower Appellate Court. Therefore, he prays that the accused be acquitted of the charges framed against him. In the alternative, he prays that as the petitioner was a first-time offender, he ought to be granted the concession of probation in case this Court came to the conclusion that no case for interference was made out.

13. The learned counsel for the complainant-Bank, on the other hand, contends that the offence is well-established. In fact, vide order dated 19.05.2016, the petitioner had pressed the petition only with respect to the quantum of sentence alone, and therefore, there was no question of addressing the Court on merits.

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

15. The plea taken by the accused that as the pledged stock had been confiscated by the Bank, no liability arose cannot be accepted. The issuance of the cheque and obtaining of a loan facility has not been denied. The defence raised by the accused that the blank cheque had been mis-utilized cannot be

accepted on the basis of a mere argument raised by the accused. It is pertinent to mention here that under Section 118 of the Negotiable Instruments Act, it is a presumption until the contrary is proved that every negotiable instrument was drawn for consideration. As per Section 139 of the Negotiable Instruments Act, unless the contrary is proved, it is a presumption that the holder of the cheque had received the cheque for the discharge of a whole or part of any debt or liability. Obviously, these presumptions are rebuttable in nature. However, in the instant case, the complainant has not been able to rebut the presumption either by way of specific evidence or by way of referring to the cross-examination of any of the witnesses. Therefore, in terms of Sections 118 and 139 of the Negotiable Instruments Act it is beyond doubt that the cheque in question had been issued for the discharge of a legally enforceable debt and once it came to be dishonoured, the liability of the petitioner arose.

Further, the petitioner has not been able to set-up any case for the grant of probation other than stating that the petitioner is a first-time offender.

16 In view of the aforementioned discussion, I find no reason to interfere with the well-reasoned judgments of the Trial Court dated 10.02.2015 and the Lower Appellate Court dated 24.02.2016. Therefore, the present revision petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

May 17 2023
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No