

233 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRR No.3059 of 2015

Date of decision: 29.08.2023

Dulari Devi

...Petitioner

VS.

Balwinder Kaur and another

...Respondents

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

Present : Mr. S.S.Rangi, Advocate and
 Mr. J.S. Sekhon, Advocate
 for the petitioner.

None for respondent No.1.

Mr.M.S.Bajwa, Deputy Advocate General, Punjab
for respondent No.2.

N.S.Shekhawat J.

1. The petitioner has filed the present revision petition against the impugned judgment dated 03.08.2015, passed by the learned Additional Sessions Judge, Patiala (Annexure P-1) and the impugned judgment and order dated 28.04.2015 passed by the Court of Judicial Magistrate 1st Class, Patiala (Annexure P-3), whereby the petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act') and was sentenced to undergo rigorous imprisonment for a period of six months and to pay a compensation of Rs.52,500/- .

2. At the outset, learned counsel for the petitioner refers to the order dated 28.01.2016 passed by a Co-ordinate Bench of this Court to contend that the petitioner has already undergone a period of approximately six months and a lenient view may be taken while imposing the fine on the present petitioner.

Even though, the impugned judgments have not been assailed by the petitioner, still the merits of the case have been examined by this Court in the light of the evidence adduced by the parties.

3. In the present case, respondent No.1/complainant filed a complaint against the petitioner under Section 138 of the Act. As per respondent No.1, the petitioner had issued a cheque bearing No.486853 dated 10.08.2013 for a sum of Rs.2,10,000/- in order to discharge the liability, however, on presentation, the said cheque was dishonoured with the remarks “payment stopped by the drawer”. Thereafter, a legal notice dated 19.08.2013 was sent through registered AD and the petitioner/accused was called upon to make the payment within a period of 15 days from the date of receipt of notice, but the petitioner failed to pay the same.

4. During the course of trial, respondent No.1/complainant herself appeared as CW-1 and tendered into evidence her duly sworn affidavit Ex.CW1/A reiterating the averments stated in the complaint alongwith, original cheque Ex.C1, original memo Ex.C2, copy of legal notice Ex.C3 and postal receipt Ex.C4. During her cross-examination, she brought copy of pass book. Thereafter, counsel for the respondent No.1/complainant closed evidence.

5. The plea of defence was also taken by the petitioner under Section 313 Cr.P.C. and three witnesses, namely DW1-Ashok Kumar, Assistant Engineer, office of EXN, Lehal Division, Patiala, DW-2 Mulakh Raj, Senior Manager of Corporation Bank and DW-3 Prince Kumar and CW-1, Dulari Devi were examined.

6. Vide the impugned judgment and order passed by the trial Court, the petitioner was ordered to be convicted under Section 138 of the Act and was

sentenced accordingly. Even the appeal filed by the petitioner was ordered to be dismissed. In the present case, the petitioner had taken a specific plea that she had obtained a loan of Rs.25,000/- and thereafter, issued the cheque in question along with other cheques, ATM card, copy of voter card and identity card as security. It was further contended that the petitioner had repaid the entire loan amount. However, the petitioner/accused completely failed to prove the date, month and year, when loan was obtained from respondent No.1 and even the fact regarding the repayment of loan could not be proved. However, the petitioner admitted her signatures over the cheque in question and ultimately, the onus shifted upon her to prove that the said cheque was not issued in discharge of legally enforceable debt. Apart from that, the petitioner herself had admitted the issuance of cheque and there was a statutory presumption under Section 139 of the Act in favour of respondent No.1. Even otherwise, I have carefully gone through the impugned judgments passed by the trial Court as well as the learned First Appellate Court and found that both the Courts have correctly appreciated the evidence led by both the sides in the light of the settled principles of law and there are no reasons to deviate from the said findings. Thus, the impugned judgments do not suffer from any illegality or perversity and are liable to be upheld by this Court.

7. In the present case, learned counsel for the petitioner had contended that the amount of compensation awarded by the Courts to respondent No.1 was on higher side. In fact, the petitioner was aged about 50 years at the time of disposal of her appeal on 03.08.2015 and at present, she is aged about 58 years and is the sole bread earner of the family. Even, she was so poor that she could not make the payment and rather stayed in jail for almost six

months. Even, she is not maintaining good health and is on the verge of starvation. Apart from that, the petitioner is also facing prosecution since last 10 years.

8. Consequently, taking a lenient view of the matter in view of the above submissions made by learned counsel for the petitioner, the amount of compensation awarded to respondent No.1 is reduced from Rs.52,500/- to Rs.30,000/-. However, the sentence of imprisonment imposed on the petitioner is reduced to the period already undergone by her.

9. In view of the above, the conviction of the petitioner under Section 138 of the Negotiable Instruments Act is ordered to be maintained and the sentence of imprisonment imposed on the petitioner is reduced to the period already undergone by her, however, the amount of compensation is ordered to be reduced from Rs.52,500/- to Rs.30,000/-, which shall be deposited by the petitioner within a period of three months from today. In case, the amount of Rs.30,000/- is not deposited within a period of three months from today, the present petition shall be deemed to be dismissed.

10. Disposed of.

(N.S.SHEKHAWAT)
JUDGE

29.08.2023
hemlata

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