



265 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-242-2024 (O&M)
DATE OF DECISION:-27.05.2024

Manjit Singh Rattu ...Petitioner.

vs.

Mohinder Singh Viridi and another ...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Lakhwinder Singh Lakhanpal, Advocate
for the petitioner.

Mr. Nikhil Chopra, Advocate,
for respondent No.1.

Mr. Siddharth Sandhu, AAG, Punjab,
for respondent No.2.

HARKESH MANUJA, J. (Oral)

CRM-5545-2024

Prayer in this application is for condonation of delay of 51 days in
filing the revision petition.

Learned counsel for the respondent(s) raise no objection to the
application.

Having heard learned counsel for the parties and gone through the
contents of the application, the applicant makes out sufficient cause for
condoning the delay.

Accordingly, application is allowed and delay of 51 days in filing
the revision petition is condoned.

CRM-5546-2024

Prayer in this application is for suspension of sentence of the applicant-petitioner.

Learned counsel for the applicant-petitioner submits that the present application has been rendered infructuous as the applicant-petitioner has already undergone the sentence of two years.

In view of the above, the present application is dismissed as having been rendered infructuous.

Main case

1. Challenge in the present revision petition is to the judgment dated 15.09.2023 passed by learned Sessions Judge, Jalandhar, whereby the appeal filed against the judgment of conviction and order of sentence dated 30.01.2020 passed by learned Judicial Magistrate Ist Class, Jalandhar, was dismissed, thereby upholding the same.

2. The facts of the case are that on account of dishonour of cheque bearing No.577483 dated 09.01.2023, amounting to Rs.42,86,000/-, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to "NI Act") came to be filed at the instance of respondent No.1-complainant against the petitioner.

3. On the basis of the evidence recorded, learned Trial Court vide judgment/order dated 30.01.2020, convicted the petitioner under Section 138 of the NI Act and sentenced him to undergo rigorous imprisonment for a period of 02 years and to pay compensation to the tune of Rs.10,00,000/- to the complainant, who can recover entire amount either from accused or from his personal properties under law.

4. Aggrieved thereof, the petitioner filed first appeal before the learned Sessions Judge, Jalandhar, which was dismissed vide judgment

dated 15.09.2023, thereby, upholding the judgment passed by the trial court.

5. Impugning the aforementioned judgments, learned counsel for the petitioner submits that the Courts below have failed to appreciate the fact that the petitioner was in custody when he allegedly issued the cheque in question to the complainant, which was stolen by the complainant from the house of the petitioner when he was in jail and his mother was sick at home. He further submits that the complainant has even failed to produce on record any evidence regarding disbursement of any loan to the petitioner. Otherwise also, petitioner has already undergone the total sentence of two years.

6. On the other hand, learned State counsel assisted by learned counsel representing respondent No.1-complainant supported the judgments passed by the Courts below while submitting that the same are absolutely in accordance with the legal proposition applicable to the facts and circumstances of the case in hand and thus, warrants no interference.

7. I have heard learned counsel for the parties and gone through the paper-book.

8. In the present case, the plea of the petitioner was that the petitioner was in custody at the time of issuance of cheque in question, whereas, no such evidence was produced on record by him to prove the same. As far as the contention raised by learned counsel for the petitioner that the cheque in question was stolen by the complainant from his house when he was in jail and his mother was sick at home, is concerned, both the Courts below rightly held that the petitioner is brother-in-law of respondent No.1-complainant, whose real sister is married to the complainant, hence, in the absence of any direct & reliable evidence, it is highly improbable that

disadvantage of his absence and shall commit theft of cheque from his house. Moreover, respondent No.1-complainant in his cross-examination has categorically stated that petitioner was in dire need of money and requested him to pay the money and thus, he gave the money to him from time to time to the tune of Rs.42,86,000/- and in order to discharge his liability, petitioner issued post dated cheque No.577483 for a sum of Rs.42,86,000/- drawn on HDFC Bank, Model Town Branch, Jalandhar, which was dishonoured on presentation vide memo dated 14.01.2013 due to “funds insufficient” and thereafter, legal notice dated 23.01.2023 was issued but no reply was filed. In order to prove his case, respondent No.1-complainant stepped into the witness box as CW-1 and tendered his affidavit as Ex.CA, original cheque as Ex.C2, cheque return memo dated 14.01.2013 as Ex.C3, legal notice dated 23.01.2023 as Ex.C4, postal receipts as Ex.C5 and Ex.C6. For reference, cross-examination of respondent No.1-complainant (Mohinder Singh Virdi) is reproduced hereunder:-

“The accused had been taking money from the deponent from time to time. He took ₹3,00,000/- from the deponent in May, 2012 vide cheque No.559172 dated 17.05.12 through NEFT from Indian Overseas Bank, New Delhi. The said money was sent by the deponent, who was in those days in Delhi, through his Delhi Bank account No.03402560003381 of the accused which is HDFC Bank, Jalandhar. The deponent further gave ₹1,00,000/- to the accused by cheque through NEFT No. SD140044583 from PNB on 18.05.12. The deponent further requested his friend Sukhdev Singh of Chandigarh to send ₹5,00,000/- to the account of accused Manjeet Singh, said Sukhdev Singh sent ₹5,00,000/- to the accused on 24.05.12 vide cheque No.386250 through RTGS in his account. The deponent also gave money to the accused in cash from time to time by arranging the same from his

friends/relatives, by taking loan from the bank and by taking loan against gold etc. The accused was unable to send one person namely Ranjit Kumar abroad and the said Ranjit Kumar was pressurising the accused to return the said money to him. The accused requested the deponent to deposit ₹5,00,000/- in the account of Ranjit Kumar resident of Phillaur. Consequently, the deponent gave a cheque bearing No. 573667 for ₹.5,00,000/-, who deposited the said cheque in his account and got the same encashed on 20.07.12. The deponent also made payment to some persons directly at the asking of the accused as the said persons were pressurising the accused to pay their money back to them. In this way the deponent gave .42,86,000/- in total to the accused. The account statement is Ex.CI."

Perusal of above reveals that petitioner being closely related to respondent No.1-complainant had taken amount from him and in order to discharge his liability, issued post dated cheque (Ex.C2), which was dishoured on presentation vide memo Ex.C3 on account of insufficient funds. Thus, it has been duly proved on record that the cheque in question was issued in discharge of his legal liability and nothing has come on record from where even inference can be drawn that the cheque in question has been misused by respondent No.1. In fact, petitioner never ever denied the fact that the disputed cheque bear his signatures and once it was admitted, the liability of the petitioner is clearly established beyond shadow of reasonable doubt. More importantly, the antecedents of the petitioner is not clean as he is involved in different criminal cases of cheating and number of complaints under Section 138 of NI Act registered against him.

Though, in the present case, petitioner has already undergone the sentence of two years, however, he refused to pay the compensation amount of Rs.10 lakhs as directed by the trial Court.

9. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below which are based on law applicable, there being no overlooking of the material available on record, re-appreciation of the evidence being impermissible, the present revision being devoid of merits is thus dismissed. The complainant is at liberty to avail his remedy as per law for recovery of compensation amount of Rs.10 lakhs in terms of order of sentence dated 30.01.2020 passed by learned Judicial Magistrate Ist Class, Jalandhar.

10. Pending application(s), if any stand(s) disposed of.

27.05.2024

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No

whether reportable: Yes/No