

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1051-2020 (O&M)
Reserved on: 16.12.2023
Pronounced on: 04.01.2024
2024: PHHC: 000078

Sukhpal Singh

. . . . Petitioner

Vs.

Jit Singh

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Tejinder Pal Singh, Advocate, for the petitioner.

Mr. Deepak Goyal, Advocate, for the respondent.

DEEPAK GUPTA, J.

Petitioner is aggrieved by his conviction recorded by the trial Court in a cheque bounce case, which has been affirmed by the appellate Court.

2. Criminal Complaint No.256 of 2014 was filed by complainant-Jit Singh (respondent herein) with the allegation that an amount of ₹4 lakh was borrowed by the accused-Sukhpal Singh (petitioner herein) from him in November 2013 for a period of four months. For discharging his liability, accused issued a cheque No.032506 dated 20.02.2014 for an amount of ₹4 lakh drawn on Union Bank of India, Branch Dhuri favouring the complainant. On presentation of the cheque by the complainant to his banker i.e., Punjab National Bank, the cheque was returned unpaid with the remarks '*not arranged for and refer to drawer*' vide memo dated 05.03.2014. Demand notice dated 19.03.2014 was issued by the complainant asking the accused to make payment of the cheque amount within 15 days. Despite

receipt of the notice, accused failed to make the payment and hence the complaint was filed on 28.04.2014 before Id. JMIC, Patiala. However, in view of the pronouncement of Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod vs. State of Maharashtra and another***, (2014) 9 SCC 129, the Court found that it did not have the territorial jurisdiction to entertain the complaint. Accordingly, complaint was returned vide order dated 14.10.2014 to be filed before the competent Court having jurisdiction, within a period of 30 days.

3. Complaint was then filed on 22.12.2014 before the Id. JMIC, Sangrur, who after recording preliminary evidence issued the process. On appearance, notice of accusation was served upon the accused, to which he pleaded not guilty and claimed trial. After taking evidence produced by the complainant, statement of accused under Section 313 CrPC was recorded, in which he pleaded no acquaintance with the complainant; that in fact he used to have money transactions with one Shinderpal Singh, to whom he had given blank cheques and pronote as security and that complainant had misused the cheque by taking it from Shinderpal Singh. Accused also produced defence evidence to support his stand.

4. After hearing both the sides, Id. JMIC, Sangrur held the accused to be guilty under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'] and convicted him accordingly vide judgment dated 01.03.2017. Vide separate order of even date, the accused-petitioner was sentenced to undergo rigorous imprisonment for a period of one year and held also to pay fine of ₹500 with default sentence of one month.

5. In appeal filed before the Court of Sessions, contention was raised that the complaint was barred by limitation, inasmuch as after return of

the complaint vide order dated 14.10.2014 by the Court of Id. JMIC, Patiala, the same was required to be filed within a period of 30 days, but the same had been filed beyond 30 days. Ld. appellate Court observed that the said plea was never raised before the trial Court. Besides, the initial complaint was filed before the Patiala Sessions Division well within limitation. Trial Court had not given any specific finding and so, delay in filing the complaint was deemed to have been waived off/condoned by the trial Court. Some other contentions were also raised by the appellant-accused, but the same were rejected. Vide judgment dated 10.02.2020, the appeal was dismissed, affirming the conviction as well as sentence.

6. It is contended by Id. Counsel before this Court that both the Courts below did not consider the fact that petitioner had not borrowed any money from the respondent-complainant; that in fact he used to give and take the money from Shinderpal Singh, known to him, and to whom he (petitioner) had given blank cheque and pronote as security and that said cheque has been misused by the complainant by taking it from Shinderpal Singh. It is further contended that no document or receipt of the loan alleged to have been taken by the petitioner was ever produced by the respondent nor the amount was shown in the income tax returns. More importantly, the complaint was not filed within stipulated period of 30 days as per the order dated 14.10.2014 of the Id. JMIC, Patiala and that appellate Court wrongly considered that this point was not raised before trial Court nor any finding was given and so, the delay was deemed to have been waived off/condoned. Ld. counsel further contends that defence evidence, as adduced by the petitioner, was not considered and so, the impugned judgments cannot be sustained in the eyes of law. With these submissions, prayer is made for

setting aside the impugned judgments passed by the Courts below and to acquit the petitioner by allowing this revision petition.

7. Ld. counsel for the respondent, on the other hand, argued that petitioner at no point of time denied his signature on the cheque and so, presumption under Section 139 of the NI Act was available to the complainant-respondent. Petitioner-accused failed to rebut the said presumption. The defence evidence adduced by him was not at all relevant to this case as has been observed by the Courts below. Ld. counsel further contends that prior to filing of the complaint, a legal notice was served upon the accused-petitioner, which was duly received by him, despite which he did not respond to the same. It is argued that in case petitioner had not borrowed any amount from the complainant-respondent or had not given the cheque in question to him, the petitioner would have immediately responded to the notice or would have moved the concerned authorities against the respondent, but no such step was ever taken. Still further, it is contended that complaint was filed within limitation before Id. JMIC, Patiala. Though the complaint was returned vide order dated 14.10.2014, but the same could not be filed within 30 days before the competent Court of Id. JMIC, Sangrur and that in order to condone the delay, respondent-complainant had moved an application under Section 142 of the NI Act, copy of which has been placed on record by the petitioner himself as Annexure P4. However, petitioner-accused did not file any reply to the application and so, it is to be assumed that he did not oppose the plea for condoning the delay. Even the trial Court, after recording preliminary evidence, issued process. During proceedings, accused never raised the plea of limitation nor opposed the application for condoning the delay and in such circumstances, Id. appellate Court

committed no error in holding that plea of delay in filing the complaint is deemed to have been waived off/condoned. Prayer is made for dismissal of the petition.

8. Having considered submissions of both the sides, this court finds no merit in this petition.

9. Perusal of the trial Court record would reveal that prior to filing of the complaint before the Id. JMIC, Patiala, the complainant-respondent had issued a legal notice dated 19.03.2014 to the accused-petitioner asking him to pay the cheque amount within 15 days from the date of receipt of the legal notice. Said notice was sent through registered post, which was duly received by the accused-petitioner as is evident from acknowledgment due card (*Ex.C5*) available in the trial Court record. Even otherwise, neither before the appellate Court nor before this Court, petitioner denied to have received the legal notice. Despite receipt of the legal notice, much prior to filing of the complaint, petitioner did not respond to the same. In case he had not borrowed any amount from the complainant, or in case he had not issued any cheque in favour of the complainant; or in case the cheque in question had been misused by the complainant after allegedly taking it from Shinderpal Singh, with whom the accused is allegedly having money transactions, the accused-petitioner would have immediately responded to the notice, by taking such a stand as is being now taken by him before the Courts. In such like circumstances, where accused did not reply to the notice duly received by him, an inference can be drawn that the defence, which has now been taken by the accused, is concocted and that allegations of the complaint contain truth. Reliance in this regard can be placed upon

Rangappa Versus Sri Mohan, 2010 (1) DCR 706, wherein it was held by Hon'ble Supreme Court that failure to reply to statutory legal notice leads to inference that there was merit in the case of complainant.

10. As far as the plea of limitation raised by the petitioner is concerned, it is not disputed that initial complaint was filed before JMIC, Patiala well within limitation. The complaint was returned vide order dated 14.10.2014 to be filed before the competent Court within 30 days. The complaint was however, filed on 22.12.2014. Section 142 of the NI Act provides that complaint is required to be made within one month of the date on which the cause of action arises. However, cognizance of the complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making the complaint within such period.

11. In the present case, petitioner-accused has himself placed on record copy of application Annexure P4, which was moved by the complainant-respondent before Id. JMIC, Sangrur so as to condone the delay in filing the complaint. It was pleaded that after return of the complaint along with the original documents, he (complainant) had fallen ill having suffered typhoid. He remained under long treatment. After feeling good, he enquired about the case and came to know that limitation period has expired and all this resulted in delay of 25 days. He prayed for condoning the said delay.

12. There is neither any plea on the part of the petitioner nor the record reveals that the petitioner-accused filed any reply to oppose the aforesaid application to condone the delay. No doubt that trial Court before issuing the process against the accused-petitioner or thereafter, did not pass

any order on the application, but at the same time, it is not revealed that the accused-petitioner ever raised any objection to the effect that complaint was time barred. Accused-petitioner fully participated in the proceedings and it is only after his conviction was recorded on 01.03.2017 that he raised the objection of limitation for the first time before the appellate Court. The appellate Court did not commit any error by observing that the petitioner could not be allowed to raise this plea at this stage, as it was never raised before the trial Court and further that delay in filing the complaint was deemed to have been condoned and that any opposition regarding the limitation was deemed to have been waived off.

13. In view of the above discussion, present petition is hereby dismissed.

04.01.2024

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No