2024:PHHC:038051

253-1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved On: 11.03.2024
Pronounced On: 13.03.2024

1. CRR-4293-2017

JAGDEV KUMAR AND ANR.

…PETITIONERS

V/S

STATE OF HARYANA AND ANR.

...RESPONDENTS

2. **CRR-4298-2017**

JAGDEV KUMAR AND ANR.

....PETITIONERS

V/S

STATE OF HARYANA AND ANR.

...RESPONDENTS

3. CRR-4299-2017

JAGDEV KUMAR AND ANR.

...PETITIONERS

VERSUS

STATE OF HARYANA AND ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.S. Dinarpur, Advocate with
Mr. Aman Godara, Advocate and
Mr. Rohit Singh, Advocate for the petitioner(s).

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. D.K. Sharma, Advocate for respondent No(s).2.

****

HARPREET SINGH BRAR, J.

This common judgment of mine shall dispose of above captioned three criminal revisions as they arise out of the same factual background. For the sake of brevity, facts are borrowed from ***CRR-4293 of 2017*** titled as ***Jagdev Kumar and another vs. State of Haryana and another.***

2. The above-noted revision petitions have been preferred by the petitioners-accused, against the judgment of conviction dated 10.07.2015 and the subsequent order of sentence dated 13.07.2015, passed by learned Judicial Magistrate Ist Class, Yamuna Nagar, in the respective complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') as well as the judgment dated 27.10.2017, passed by learned Sessions Judge, Yamuna Nagar, whereby, the appeal filed by the petitioners was dismissed. The petitioners were sentenced as under: -

Under Section 138 NI Act	**R.I. for 1 year with compensation of Rs.4,50,000/-** to be paid to the complainant within two months. Further R.I. of 3 months in case of default of payment of compensation within said period. ***(consecutive sentence in three complaints by the trial Court but modified by lower Appellate Court to run concurrently)***

FACTUAL MATRIX

3. Allegedly, petitioner No.1-Jagdev Kumar is the proprietor of petitioner No.2-M/s S.R. Engineering Industries, wherein, respondent No.2-complainant-Surinder Singh was also a partner and vide dissolution deed dated 10.05.2012, after settlement of accounts, respondent No.2 retired from the firm after execution of a dissolution deed and petitioner No.1 became the sole

proprietor. As per the private agreement also dated 10.05.2012, petitioner No.1 agreed to pay an amount of Rs.22,00,000/- to respondent no.2, qua his share. In order to discharge the aforesaid liability, petitioner No.1 issued a cheque bearing No.582470 dated 10.05.2013 for Rs.4,00,000/- along with two other cheques of the same amount and similar date, in favour of respondent no.2. When presented for encashment, the said cheque was dishonoured vide memo dated 01.06.2013 with reason 'Payment Stopped by Drawer'. Thereupon, respondent No.2-complainant served a legal notice upon petitioner No.1 calling upon him to make the payment qua the settlement amount of Rs.22,00,000/-, but to no avail.

4. Aggrieved by the same, respondent No.2 filed three respective complaints under Section 138 of NI Act, including complaint no.1786 of 2013 in the present case, which were disposed of by the learned trial Court, by way of judgment dated 10.07.2015, wherein, petitioner No.1, being the sole proprietor of accused firm-petitioner No.2, was convicted under Section 138 NI Act and ordered to undergo sentence as mentioned above.

5. Aggrieved by the said judgment and order, the petitioners filed an appeal before the learned lower Appellate Court, wherein, the said Court upheld the judgment of conviction, but modified the order of sentence to the extent that substantive sentence of imprisonment was modified to run concurrently with the sentence awarded in other complaints bearing Nos.1788 of 2013 and 1780 of 2013.

6. Thereafter, the petitioners-accused aggrieved by the conviction and sentence have approached this Court by way of filing revisions bearing Nos.CRR-4293, 4298 & 4299 of 2017, against their conviction, whereas, the

complainant Surinder Kumar has approached this Court in case bearing CRR No.2351 of 2018, praying for enhancement of sentence. The sentence of accused Jagdev Kumar was suspended by this Court, pending the disposal of the present revision petitions vide order dated 14.12.2017.

CONTENTIONS

7. Learned counsel for the petitioners *inter alia* contends that there is not an *iota* of evidence to prove that the cheques in question were issued by the petitioner No.1, in order to discharge any legally enforceable debt. It is further submitted that respondent No.2-complainant has himself taken a categorical stand that the firm was dissolved on 10.05.2012 and the cheques in question are dated 10.05.2013, i.e., when the accused firm 'M/s S.R Engineering Industries' was not in existence as a partnership firm, thereby, making the fact that the complainant knowingly accepted the said cheques unpalatable. He further submits that the complainant has categorically admitted that the petitioner No.1-Jagdev Kumar had personal liability towards him, but he somehow accepted cheques issued under the name of the firm, which were signed by petitioner No.1, with stamp stating him to be a partner.

8. Learned counsel for the petitioners further contends that respondent no.2-complainant himself admitted in his cross-examination that he has no documentary evidence to show that he invested Rs.27,00,000/- in the said firm, as alleged by him. As admitted by the complainant himself, neither did he show any investment of the aforesaid amount in his income tax return, nor he maintained any account books qua the same and hence, the complainant has miserably failed to show if there is any legally enforceable liability on the part of the petitioners-accused. He further submits that since the alleged

cheques in question were issued by petitioner No.1, as partner of the said firm and not as sole proprietor, he could not have been held liable under Section 138 of the NI Act and in order to support this argument, he places reliance on the judgment rendered in ***Mukesh Raoji Navadhare vs. Ajit Bhaskar Kasbekar and Anr., 2010(5) R.C.R(Crl.) 195.***

9. *Per contra,* learned counsel for respondent No.2-complainant submits that the petitioners have been convicted and sentenced by the learned Courts below after due appreciation of the evidence on record and all the pleas taken by the learned counsel for the petitioners have already been dealt with by the said Courts. He further submits that petitioner no.1 has categorically admitted his signatures on the cheques in question and thus, the presumption envisaged in Section 118 of the NI Act can legally be inferred that the said cheques were drawn for discharge of an outstanding debt and places reliance on the judgments rendered in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, 2016(4) R.C.R(Civil) 487; Vishwanath Jha vs. State of Haryana and Another, 2018(4) R.C.R(Crl.) 39; Manmohan Singh vs. Daljit Singh Chadha, 2019(4) R.C.R(Crl.) 657; Shakir vs. Sanjay Sharma & Another, 2023(2) R.C.R(Crl.) 31.***

10. Learned state counsel affirms that the impugned judgments of conviction and order of sentence have been passed after complete appreciation of the evidence on record and thus, do not warrant any interference by this Court. He further places on record the custody certificate dated 07.03.2024 of petitioner No.1-Jagdev Kumar and submits that he has undergone 01 month and 19 days of custody.

ANALYSIS AND OBSERVATION

11. Having heard the learned counsel for the parties and after perusing the paper-book with their able assistance, it is manifestly clear that there is a specific claim of the complainant that he had contributed an amount of Rs.27 lakhs in the above said partnership firm, which was earlier being run with petitioner no.1-accused Jagdish Kumar. Admittedly, the complainant has failed miserably to bring on record any document of accounts to show that there had ever been any such contribution of Rs.27 lakhs made by him. Another important fact worth noting is that while serving the legal notice upon the accused, the amount of Rs.22 lakhs has been claimed as liability outstanding against the accused. At the same time, the complainant has taken a specific stand that there were three cheques dated 10.05.2013 of Rs.4 lakhs each, issued by the accused/petitioners, in favour of the complainant but he has failed to explain that if there was a liability of Rs.22 lakhs of the petitioners/accused towards the complainant then what compelled the complainant to accept the cheques in question amounting to Rs.12 lakhs in total.

12. There are two documents on the record each dated 10.05.2012. One of which is the dissolution deed (Ex.D1)duly admitted by the complainant as well as his witnesses and another one is the private agreement between the complainant and the accused which has been relied upon by the complainant. In the said dissolution deed, the settlement amount has been mentioned to the tune of Rs.50,000/- but the amount of Rs.27,00,000/- or Rs.22,00,000/- nowhere finds mention. Interestingly, the aforesaid private agreement has been denied by the accused to have been executed by him and the complainant has been unable to bring the original of the same on the record. It certainly defeats

the said private agreement (Ex.P6) which cannot be relied upon in any manner. However, the said dissolution deed (Ex.D1) does not find mention in the legal notice served upon the accused by the counsel of the complainant or the respective complaints filed by the complainant. There is a material concealment on the part of the complainant in regard to the said dissolution deed. A close scrutiny of the said deed shows that there is no mention of any amount of Rs.27 lakhs or Rs.22 lakhs as alleged to have been invested by the complainant in the said firm. It is beyond imagination that a person having right to recover an amount ofRs.22,00,000/- would not even mention his right to recover the said amount in the dissolution deed which is a relevant document of the firm.

13. Another important fact evident from the record is that as per CW1 Lakhwinder Singh who is the brother of the complainant, the cheques in question were handed over to him by the accused at the time of execution of the alleged agreement dated 10.05.2012 qua which a compromise was reached and the accounts were settled and that he handed over the said cheques to the complainant on 10.05.2013. The aforesaid agreement dated 10.05.2012 which has been relied upon by the complainant has been placed on record in form of a carbon copy, but no such document in original has come on the record. Further, there has never been any application moved by the complainant before the trial court to seek permission to prove the said agreement by way of secondary evidence.

14. Once there was a dispute between the complainant and the accused who were admittedly earlier the partner in the above said firm and the same was to be settled then it could not be without writing in an adequate manner. The complainant has admitted that two cheques of ₹1,00,00 each, one

dated 15.12.12 and the other dated 02.02.2013 were issued by the accused in favour of the complainant but neither there is any reference of encashment of the said two checks in the legal notice served upon the accused nor the same is reflected anywhere in the complaint. Moreover, the aforesaid cheques have been signed by the accused Jagdev Kumar as a proprietor of the firm, unlike the cheques in question, leading this Court to draw adverse inference against the stand taken by the complainant.

15. The plea taken by the learned counsel for respondent no.2-complainant that signatures have been admitted by the accused on the cheques in question and therefore, the presumption envisaged in Section 118 of the NI Act can legally be inferred that the said cheques were drawn for discharge of an outstanding debt can only be considered once a legally enforceable debt or liability is established. But a perusal of the dissolution deed shows that no such debt or liability as alleged by the complainant was outstanding against the accused. Further, the material brought on record by the accused Jagdev Kumar is sufficient to support his contention that the cheques in question were lost in due course leading him to request the bank to stop the payment of the said cheques. The aforesaid contention further stands corroborated from the fact that a DDR dated 25.04.2013 was lodged by the accused before the police, wherein, it was mentioned that the cheques in question along with multiple other cheques were lost by him.

CONCLUSION

16. In view of the above discussion and after giving due consideration to the facts and circumstances of the case at hand, this Court finds sufficient cause to interfere with the judgment of conviction dated 10.07.2015 and the

subsequent order of sentence dated 13.07.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar as well as the judgment dated 27.10.2017 passed by learned Sessions Judge, Yamuna Nagar.

17. Hence, the present revision petitions are allowed and the above-said impugned judgments and order are set aside. The petitioners-accused are hereby acquitted of the charges framed against them in the present cases and the bail bonds and surety bonds stand discharged.

18. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

March 13, 2024
manisha

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No