

CRR-2073-2023

221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-41365-2023
in/and CRR-2073-2023(O&M)
Date of Decision: 08.02.2024

VIRSA SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ranbir Singh Sekhon, Advocate
for the petitioner

Mr. Subhash Godara, AAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

CRM-41365-2023

This is an application seeking suspension of sentence filed by the applicant-petitioner.

The applicant-petitioner has not surrendered before the jail authorities despite orders dated 13.10.2023 and 16.11.2023 passed by this court.

In view of the above, the application seeking suspension of sentence of the applicant-petitioner stands dismissed and this Court is left with no other option but to decide the case on merits as such the main case is taken on board today for disposal.

CRR-2073-2023

1. The instant revision petition has been preferred against the impugned Judgement of conviction and order of sentence dated 04.03.2023 passed by learned Judicial Magistrate Ist Class, Ferozepur in criminal

complaint No.237 dated 02.02.2018 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) as well as the impugned Judgement dated 29.07.2023 passed by the learned District & Sessions Judge, Ferozepur in CRA No.115 of 2023, whereby, the appeal filed by the present petitioner against the judgement dated 04.03.2023 has been dismissed.

FACTUAL BACKGROUND

2. Briefly, the facts are that the petitioner obtained a loan of Rs.21,00,000/- from respondent no.2-complainant Bank on 27.01.2014. The petitioner also mortgaged his land measuring 61 kanal 01 marla as security to repay the amount of loan and interest but failed to maintain financial discipline and committed default of terms and conditions of repayment of the said loan. A liability of Rs.25,69,096/- accrued against the petitioner and therefore, in order to discharge his partial liability, the petitioner issued a Cheque bearing No.302976 dated 27.12.2017 of Rs.8,00,000/- in favour of respondent no.2 which was dishonoured vide memo dated 27.12.2017 with remarks 'Insufficient Funds'. Thereafter, respondent no.2-bank sent a legal notice dated 30.12.2017 calling upon the petitioner to pay the cheque amount but to no avail. Aggrieved, respondent no.2-complainant Bank filed the above-mention complaint.

3. Learned trial Court convicted the petitioner while observing that the ingredients of Section 138 NI Act are made out and sentenced him undergo to two years of rigorous imprisonment and to pay the said cheque amount along with simple interest of 9% per annum (from the date of issuance

of cheque till the date of the order, i.e., 04.03.2023) to respondent no.2-complainant.

4. Aggrieved, the petitioner filed an appeal against the abovesaid judgement of conviction and the order of sentence. During the pendency of the appeal, the petitioner absented himself due to which the order vide which his sentence was suspended was revoked and notice to his counsel was issued and duly served. His counsel still did not come present inspite of repeated calls. Thereupon, the learned lower Appellate Court chose to decide the appeal on merits. After hearing counsel for the respondent and going through the record, learned lower Appellate Court recorded that there is no illegality or infirmity in the findings recorded by the learned trial Court which warrants any interference and dismissed his appeal, thereby, upholding his conviction as well as sentence. Still aggrieved, the petitioner has preferred the present revision petition.

CONTENTIONS

5. Learned counsel for the petitioner, at the outset, raises multiple contentions. He submits that the cheque in question was issued to respondent no.2 bank in form of a signed blank cheque for the purpose of verification of bank details of the petitioner at the time of loan application. The petitioner was regularly paying the installments as agreed but a dispute arose in regards to an amount of Rs.8,00,000/- and due to this dispute, respondent no.2 bank misused the blank cheque given to it. He further submits that the cheque in question as well as the memo dated 27.12.2017 are from State Bank of Patiala which was not in existence at the time of presentation of the same as the aforesaid Bank had already merged into State Bank of India. It is further

submitted that complaint filed by respondent no.2 does not disclose crucial information regarding the installments or the calculation qua the remaining loan of Rs.8,00,000/-.

6. Learned counsel for the petitioner further contends there was no existing liability of the petitioner towards respondent no.2 and the cheque in question was misused by the respondent bank. He further submits that the sole witness CW-1 examined by respondent no.2-complainant, i.e., the Branch Manager is reprimed with the facts of the case and does not have due knowledge of the case. He further points towards the fact that the cheque in question bears signatures in Punjabi whereas the body is written in English language and even the ink used in both varies from each other. He further submits that respondent no.2 had already filed a suit for recovery against the petitioner on the basis of the same cheque and therefore, it amounts to double jeopardy. He submits while concluding that due to all aforementioned irregularities, the impugned judgements are liable to be set aside.

7. Learned state counsel contends that the judgment of conviction and the order of sentence are well reasoned and have been passed by the learned trial Court after due appreciation of the evidence on record and therefore, the present revision petition deserves dismissal.

ANALYSIS AND OBSERVATIONS

8. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

9. This Court finds no merit in the submissions made by the learned counsel for the petitioner. A perusal of the material on record shows that the signatures on the cheque have not been denied by the petitioner and therefore,

the presumption under Section 139 NI Act begins in favour of respondent no.2 which has nowhere been rebutted by the petitioner by raising a successful probable defence. As far as the question of competency of CW-1 to depose before the learned trial Court is concerned, he being the authorized manager of respondent no.2 bank is duly competent to depose on behalf of the bank. Most importantly, CW-1 Vikram Singh, Branch Manager has proved on record the account statement as per which the petitioner had obtained PBKCC limit from respondent no.2 bank and a sum of Rs.25,69,096/- was due against the petitioner at the time of the issuance of the cheque in question, whereas, the petitioner has not denied the receiving of the loan from respondent no.2 bank. Further, the fact that the cheque in question and the memo bear the name of State Bank of Patiala which no longer exists due to its merger into another bank has absolutely no bearing on the case of the petitioner.

10. Therefore, the observation recorded by the learned trial Court that the petitioner remained unable to rebut the presumption that the cheque in question was issued by him in discharge of a valid debt and that the ingredients of Section 138 NI Act are made out, stand validated.

CONCLUSION

11. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned trial Court or the learned lower Appellate Court which warrants interference by this Court. As such, there is no merit in the present present petition and the same is dismissed. Pending miscellaneous application(s), if any, shall also be disposed of accordingly.

12. The concerned jurisdictional police authorities as well as the learned Chief Judicial Magistrate, Ferozepur are directed to pass necessary orders to secure the presence of the petitioner-accused to make him undergo remaining part of the sentence awarded to him by the learned trial Court.

(HARPREET SINGH BRAR)
JUDGE

08.02.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No