

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

256-2

CRR-2220-2023 (O&M)
Date of decision: 09.04.2024

Kuldeep Singh

.....Petitioner

Versus

Balbir Singh through his LRs and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Satish Saini, Advocate
for respondent No.1.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking setting aside of judgment dated 18.07.2023 passed by learned Additional Sessions Judge, Karnal in Criminal Appeal No.CRA/690/2016 dated 03.12.2016 as well as judgment of conviction dated 03.11.2016 passed by learned Judicial Magistrate 1st Class, Karnal in Criminal Complaint No.NACT/912/2015 dated 09.06.2015 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

2. Learned counsel for the petitioner-accused (hereinafter referred to as 'accused') is impugning the order dated 03.11.2016 passed by the learned Trial Court and which was later affirmed by the learned Appellate Court inter alia on the ground that learned Trial Court and learned Appellate Court failed to appreciate that respondent No.1-complainant (hereinafter referred to as 'complainant') had miserably failed to prove his case against him by way of any cogent much less

convincing evidence. Further, the learned Trial Court erred in ignoring the trustworthy evidence presented by the accused to the effect that complainant had business dealings (chit fund business) with the accused; the security cheque given to the complainant by the accused had been misused by him due to a dispute pertaining to Panchayat elections, which led to the accused discontinuing his business dealings with the complainant. It was in the aforementioned background that the complainant intentionally presented the cheque No.135234 dated 19.03.2015 for Rs.7,00,000/- for encashment so as to cheat the accused and extract money from him by cooking up a totally fabricated case against him. It has been further argued that learned Trial Court and the learned Appellate Court also failed miserably to appreciate that the complainant had failed to prove his financial status, as to how he could have advanced a huge amount of Rs.7,00,000/- to the accused as a friendly loan; even the ink used in the body of the cheque and the signatures of the accused were different, which made it absolutely clear that the security cheque had indeed been misused by the complainant on account of the strained relations between the parties, following the Panchayat election.

3. I have heard learned counsel for the parties and perused the relevant material on record.

4. The learned Trial Court vide its order dated 03.11.2016 convicted the accused and sentenced him as under:-

Offence(s) u/s	Period of sentence(s)	Compensation	Period of sentence in default of payment of fine
138 of the NI Act	RI for 01 year	Rs.7,00,000/-	RI for 03 months

5. The case of the complainant in brief is that the accused received a friendly loan of Rs.7,00,000/- from the complainant, a relative of the accused, with the promise to repay it within a specified time. However, the accused failed to fulfil his obligation. Consequently, upon repeated requests from the complainant, the accused issued cheque No.135234 dated 19.03.2015 for Rs.7,00,000/- in favour of the complainant, assuring its encashment upon presentation to settle the debt. The complainant attempted to encash the cheque twice through the bank of the accused, but it was returned on both the occasions with the remarks "Account Closed" on the cheque return memos dated 20.03.2015 and 21.04.2015 respectively. Subsequently, the complainant sent a legal notice dated 12.05.2015 to the accused, demanding payment of the cheque amount within 15 days from the date of receipt of the legal notice. However, the accused neither responded to the notice nor made the payment, leading to the filing of the complaint in question.

6. After taking into consideration, the preliminary evidence of the complainant, the learned Trial Court issued summons to the accused under Section 138 of the NI Act. Upon appearance, the accused pleaded not guilty and claimed trial. During trial, the complainant testified as CW1 and corroborated the allegations levelled in the complaint in question. The entire incriminating evidence was then put to the accused under Section 313 of the Cr.P.C., who denied the same and opted to lead evidence in his defence. However, the accused did not lead any evidence and concluded his evidence after recording a statement before the learned Trial Court to the said effect. On the basis of the material on

record and other evidence led, the learned Trial Court passed the impugned order which as already observed earlier was upheld by the learned Appellate Court.

7. To substantiate the allegations levelled against the accused, the complainant who testified as CW1 categorically reiterated that he was a relative of accused Kuldeep Singh. In January, 2015, accused Kuldeep had received money from the complainant for the purchase of a vehicle, a transaction which was endorsed by their entire family. The complainant also reiterated that accused Kuldeep Singh had given a pre-filled cheque bearing his signatures to him at his residence. Despite, the accused having been given ample opportunity, he miserably failed to refute this testimony of the complainant or even challenge the authenticity of his signatures on cheque Ex.C1 which was returned by his bank with the remarks "Account Closed". The entire defence of the accused rested solely on claiming that the cheque in question had been given as a security, however, he was not able to substantiate the same except by his self serving statement.

8. No cogent evidence was led indicating any involvement of unrecorded money in the loan in question. Rather the complainant who stepped into the witness box as CW1 categorically acknowledged the relationship between him and the accused and the delivery of the cheque book to the accused. Although some discrepancies in ink were noted in Ex.C1, however, CW1 complainant, attributed this to the cheque having been pre-filled. The accused was unsuccessful in countering the said assertion of the complainant by leading any evidence. The cheque dated 19.03.2015 was presented by the

complainant on 20.03.2015 and 21.04.2015. Had it been intended to be a security cheque, the accused would have objected to its presentation, yet for reasons very strange and rather obvious, he chose to close his bank account instead, coupled with the fact that he did not even respond to the legal notice sent to him by the complainant.

9. This Court has no hesitation in affirming the impugned orders dated 03.11.2016 and 18.07.2023 passed by the learned Trial Court and the learned Appellate Court respectively by holding that the complainant had been able to successfully prove his case beyond reasonable doubt. The complainant has provided compelling evidence attracting all the essential ingredients to attract the mischief of Section 138 of the NI Act whereas the accused on the other hand, has miserably failed to rebut the case of the complainant. In view of the overwhelming evidence presented by the complainant during trial, this Court does not find any reason to set aside the impugned orders dated 03.11.2016 and 18.07.2023.

10. Accordingly, the instant petition is hereby dismissed.

11. In the present case, the petitioner has also filed CRM-41555-2023 seeking benefit of concurrent running of his sentences in Criminal Complaint No.NACT/912/2015 of 09.06.2015 titled as 'Balbir Singh Vs. Kuldeep Singh' under Section 138 of the NI Act and Criminal Complaint No.NACT/1196/2015 dated 05.08.2015 titled as 'Shakti Lal Vs. Kuldeep Singh' under Section 138 of the NI Act, however, a perusal of both the files reveal that both the complaints arise out of different transactions between the petitioner and two different complainants. Therefore, no ground is made out for concurrent running

of sentences. Accordingly, all pending applications including application for concurrent running of sentences-CRM-41555-2023, stand dismissed.

09.04.2024

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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