

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19932-2017

Date of Decision: 06.02.2025

Anjana Kumari

... Petitioner

VS.

Harjit Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Harish Chhabra, Advocate for the petitioner

Mr. RS Rawat, Advocate for the respondent

Sandeep Moudgil, J. (Oral)

(1). This petition under Section 482 of CrPC has been filed by the petitioner-complainant seeking to set aside the judgment dated 07.06.2016 (Annexure P1) passed by Addl. Sessions Judge, Chandigarh whereby the revision petition filed by the petitioner-complainant has been dismissed and the judgment dated 28.08.2015 of the trial court (Annexure P2) vide which the respondent has been sentenced to undergo simple imprisonment till the rising of the court and to pay fine of Rs.1000/- and in default of payment of fine, to further undergo simple imprisonment for one day, in a complaint under Section 138 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) filed by the petitioner-complainant.

(2). Learned counsel for the petitioner-complainant submits that the courts below have gravely erred in taking unduly lenient view in sentencing the respondent only a meagre punishment when he has committed an economic offence and should have been punished by imposing the maximum sentence as provided under the law, i.e., punishment with imprisonment for a term which may be extended to two years, or with fine which may extend to

twice the amount of the cheque, or with both, especially when the courts below have observed that it shall not be appropriate to release the respondent on probation and is required to be taught a lesson.

(3). He then submits that the observation made by the courts below is erroneous in presuming that the respondent/convict might have paid 1/3rd of the already paid sum of Rs.7,50,000/- and given the possession of the Car to the petitioner/complainant and her husband, and if the same is coupled with possession of car, the same would make more value than the amount of cheque in question, which is totally baseless, unsubstantiated and contrary to the facts and evidence. It is argued that in fact, the above said amount of Rs.7,50,000/- has nothing to do with the outstanding legal liability of the cheque in question even as per the Compromise Deed in question (Annexure P-4) which was admittedly executed among the respondent and his two brothers namely Ranjit Singh and Kawaljit Singh as the first party with the petitioner/complainant and her husband namely Rajinder Kumar as second party involving various issues including a flat etc.

(4). Learned counsel then urged that the respondent has himself admitted that he has not even complied with the terms of the compromise deed (Annexure P4) so far as the possession of the car in question is concerned and it has been categorically deposed by the petitioner that the same is lying with her as a liability for which she has been constrained to give its EMI out of her limited salary as a government servant, and whereas the respondent has not either cared to take its possession or transfer its ownership in her favour till date. It is further averred that the respondent got a legal notice dated 19.10.2011 issued to the petitioner (Annexure P-5) whereby, the

respondent, on its own, had cancelled the said compromise deed and that apart, the respondent has himself admitted the outstanding debt liability of the cheque in question vide his defence statement under Section 313 dated 10.03.2015 (Annexure P-6).

(5). Learned counsel for the respondent contends that the respondent has admitted that petitioner and her husband had earlier helped his brother Ranjit Singh for purchasing a flat and as such, his liability during the time when the car was in his possession stands admitted on the ground that car was purchased by petitioner and her husband as benami. He further submits that the respondent and his brothers had paid a sum of Rs.7,50,000/- to the petitioner and parted with the possession of Indigo Manza Car and as such the entire outstanding liability stood discharged as per that compromise, but complainant has not performed its part and has not withdrawn instant case.

(6). Heard learned counsel for the parties.

(7). The trial court in its judgment held that respondent Harjit Singh is guilty of commission of offence punishable under Section 138 of Negotiable Instruments Act. It was observed by the trial court that respondent had already paid Rs.7,50,000/- to the petitioner-complainant and her husband which has been admitted. It was also observed by the trial Court that one Indigo Manza car has been handed over to petitioner and she has admitted the same in cross-examination. It is evidently admitted fact that the cheque amount was Rs.4,50,000/- and against that amount, the respondent has already paid Rs.7,50,000/- to the petitioner besides giving his Indigo Manza car which has been duly received by the petitioner. The relevant findings of the trial court reads as under:-

“16. A perusal of compromise Ex.D2 transpire that it was executed between complainant and her husband on one side and accused along with his two brothers on the other side. As per the compromise Ex.D2, accused and his brothers were to pay a total sum of ₹7,50,000/- to complainant and her husband, which they have admittedly paid. The accused had also to give Indigo Manza Car to complainant, which accused has admittedly given. The accused has not yet transferred ownership of that car in favour of complainant. In lieu of those acts of accused and his brothers, the complainant and her husband had undertook not to claim anything in a flat in possession of Ranjit Singh, brother of accused and had further undertook to withdraw instant case and one other case and to return some documents to accused. The compromise was effected between the parties out of court during the pendency of instant case and later on, due to some misunderstanding between the parties, the accused has not transferred the ownership of Indigo Manza Car in favour of complainant, for which reason, complainant has not withdrawn instant complaint and has not performed other acts mentioned in the compromise.

17. In view of the reply to legal notice Ex.C8 and compromise Ex.D2, there is no gainsaying that accused and his brothers were indebted to complainant and her husband for the financial helps received by them for the purchase of a flat and Indigo Manza Car. Due to said debt, the accused and his brothers agreed to pay a sum of ₹7,50,000/- as also to give Indigo Manza Car to complainant and her husband in agreement Ex.D2. The admitted outstanding liability thus, proves the whole case of complainant. The accused must have issue cheque in question in favour of complainant for repayment of said outstanding liability. Even if the case of accused is admitted that he had issued cheque earlier as security, the complainant was well within her rights to utilizing the same for recovering the outstanding dues from the accused. The stand of accused that he has never taken a loan from complainant is thus, not acceptable. Since the accused had admittedly paid outstanding liability during the pendency of instant suit, it must follow that said liability was outstanding on the date of issuance of

cheque in question as also on the date of institution of instant complaint. The cheque in question was thus, indubitably issued by accused in discharge of his outstanding liability.”

(8). Though the liability of the respondent and the occasion for him to issue the cheque to the petitioner stood established, it is equally undeniable that the respondent and his brother paid Rs.7,50,000/- and also gave their Indigo Manza car to the petitioner and her husband vide agreement Ex.D2. It also appears that a compromise had been entered into between the parties during the pendency of the complaint but since the same could not be fructified, the petitioner did not withdraw the complaint. The fact of the matter is though there is no legal debt liability of the respondent yet the cheque which was issued by him when presented in the Bank was dishonoured. It is for this petty reason and as a token of teaching a lesson to the respondent, the trial court has adequately punished. In the wake of such findings, the petitioner cannot be allowed to maintain this petition just to satisfy her ego and personal grudge.

(9). In such circumstances, the observations of the trial Court vide judgment dated 28.08.2015 which has been affirmed by the revisional court vide judgment dated 07.06.2016 is based on facts and legal jurisprudence and thus cannot be faulted with.

(10). Dismissed.

06.02.2025

V.Vishal

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

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No