IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-419-2009 (O & M)
Date of decision: 09.01.2025

Surinder Pal

…... Petitioner

V/s

The Punjab State Cooperative Supply and Marketing Federation Limited and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Keshavam Chaudhri, Advocate,
for the petitioner.

Mr.Amaninder Preet, Advocate,
for the respondents.

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JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 30.01.2009 passed by the Additional Sessions Judge, Tarn Taran whereby the appeal filed against the judgment of conviction and order of sentence dated 18.09.2000 passed by the Sub Divisional Judicial Magistrate, Patti has been dismissed.

2. The brief facts of this case are that Punjab State Cooperative Supply and Marketing Federation Limited filed this complaint through its

Branch Manager Sh. Bachittar Singh against the accused, namely, Surinder Pal on the ground that Surinder Pal was a partner of firm M/s. Lekh Raj Dhawan Rice Mills, Bhikhiwind. The complainant-respondents mentioned in the complaint that Punjab State Cooperative Supply and Marketing Federation (Markfed) was a corporate body and Sh. Bachittar Singh was the Branch Manager, who was legally competent to file the complaint. The complainant-Corporation was dealing with the sale, purchase, storage and shelling of paddy. M/s.Lekh Raj Dhawan Rice Mills was carrying on the business of rice shelling at Bhikhiwind, Distt. Amritsar and Surinder Pal was its partner. The paddy was stored in the premises of the accused-petitioner for shelling but the accused-petitioner did not supply the rice but agreed to pay the price of the paddy to the complainant-respondents and in lieu of the price of paddy, the accused-petitioner Surinder Pal issued cheque No.0558975 dated 04.06.1996 for a sum of Rs.10 lacs. The cheque was presented by the complainant-respondents at the State Bank of India, Branch Bhikhiwind but the cheque was returned back on 21.8.1996 due to the stoppage of payment and the cheque was dishonoured. The complainant-respondents issued a notice and demanded the amount. A notice was sent through a registered letter dated 27.08.1996 but the accused-petitioner did not receive the notice knowingly and intentionally and failed to make the payment. Therefore, the complaint was filed.

3. After considering the preliminary evidence, the accused-petitioner was summoned to face trial under section 138 of Negotiable Instrument Act vide order dated 10.10.1996.

4. The complainant-respondents examined S.R.Chug, Manager of State Bank of India, Branch Bhikhiwind as PW1, who brought the record relating to cheque in question and this witness proved the cheque Ex. PA, receipt regarding receipt of cheque Ex. PB and memo Ex. PC which was annexed with the cheque at the time of presentation. The cheque was not encashed due to stop payment instruction and certified copy of the register was Ex.PD. This witness also stated that an application was moved by accused-petitioner Surinder Pal to stop the payment and copy of this application was Ex. PE. The copy of the ledger of the account of the accused-petitioner M/s.Lekh Raj Dhawan Rice Mills was Ex.PF. On 04.06.1996, the balance was only Rs.1585/-. Bachittar Singh, Branch Manager of the complainant-respondents appeared in the witness box as PW2 and stated the facts of the complaint and closed his evidence.

5. The accused was examined under section 313 of Cr.P.C. and the entire evidence was put to him. He denied the same and stated that the cheque, in question, was lost or stolen by the complainant-respondents and was bearing his signatures. He had lodged the FIR in this connection and no amount was due against him. In defence, the accused had examined Rajwinder Singh as RW-1 who proved copy of rapat Ex.R1 and Tilak Raj was examined as RW-2, who brought the agreement dated 07.10.1994 executed between the accused-petitioner and the complainant-respondents and attested copy of the same was Ex.R2.

6. After hearing the parties and considering the record, the Trial court convicted the accused under Section 138 of Negotiable Instrument Act and sentenced him as under:-

Offence under Sections	**Sentence RI/SI**	**Fine**	**RI/SI in default of payment of fine**
138 of the N.I. Act	(RI) 06 months	Rs.1,000/-	(RI) 02 months

7. The accused-petitioner preferred an appeal which came to be dismissed by the Court of the Additional Sessions Judge, Tarn Taran vide judgment dated 30.01.2009.

8. The aforementioned judgments are under challenge in the present petition.

9. The learned counsel for the petitioner contends that both the courts below had failed to appreciate that the version set forth by the complainant-respondents did not qualify the ingredients of Section 138 of the Negotiable Instruments Act, 1881, and the same was neither probable nor appealable to ordinary prudence. Both the courts below had failed to appreciate that no cause of action had arisen in favour of the complainant-respondents as no notice was served upon the accused-petitioner. The courts below had failed to appreciate that the complaint had not been filed by a competent person as no resolution was proved on record. Similarly, notice was not issued by a competent person and as such, the notice was defective. The courts below had gravely erred in not appreciating that the signatures on the cheque were of a different ink from the body writing and actually, this

was a lost cheque and it had been proved on record that the accused-petitioner had lodged a complaint with the police qua the loss of cheque in question.

In fact, both the courts below had failed to appreciate that apparently, a civil dispute was being given the cloak of a criminal nature as there was an agreement executed between the parties.

He, therefore, contends that the impugned judgments were liable to be set aside and the accused-petitioner be acquitted of the charges framed against him.

10. The learned counsel for the complainant-respondents contends that the cheque was issued for the discharge of a legally enforceable debt. The accused-petitioner had appeared in the Court on the basis of summons issued to him on the same address as the notice. The complaint was filed by duly authorized person in view of the Resolution dated 05.04.1995 Ex. DX. He, therefore, contends that no fault could be found with the impugned judgments of conviction and the present petition was liable to be dismissed.

11. I have heard the learned counsel for the parties and gone through the record.

12. As per the case of the complainant-respondents, Surinder Pal, a partner of M/s Lekh Raj Dhawan Rice Mills, Bhikhiwind, Distt Amritsar had issued a cheque Ex. PA in favour of the complainant i.e. Punjab State Cooperative Supply and Marketing Federation Limited Bhikhiwind, Tehsil Patti Distt. Amritsar, in order to discharge his legal liability as he had failed to supply the rice against the paddy supplied by the complainant-respondents

to M/s. Lekh Raj Dhawan Rice Mills. This cheque was for Rs.10 lacs and was presented in the bank for encashment vide memo Ex. PB and this cheque was sent to the State Bank of India, Branch Bhikhiwind, for encashment and was returned back vide memo Ex.PC on the ground of 'stop payment' instructions and then, notice Ex.PD was issued to demand the amount through registered letter and postal receipt brought on record as Ex. PE/1 and UPC receipt is Ex.PF/1. This notice was issued on the same address, vide which, the accused-petitioner appeared in the Trial court and filed his appeal after his conviction. So, the complainant-respondents have been able to prove that the cheque in question was issued for the discharge of a legal liability and this cheque was dishonoured due to the reason of 'stop payment' instructions and even otherwise, the balance sheet of the account of accused-petitioner Ex. PF reveals that the amount in the account of accused-petitioner was only Rs.1612.67p., when this cheque was issued. Issuance of 'stop payment' instructions also amount to an offence under Section 138 of the Negotiable Instrument Act after the issuance of cheque without any valid reason. This was so held by this Court in case titled as ***"Amar Nath Vs Naresh Kumar Aggarwal" 1998(1) CivCC 401***. The defence of the accused-petitioner that the cheque in question was lost is not believable as this cheque is dated 04.06.1996 and he immediately applied to the bank for stoppage of the payment i.e. on 05.06.1996. This is mentioned in the record of the bank and a copy of the same is Ex.PD. The letter issued to the bank by accused/petitioner is also dated 04.06.1996 and the copy of this application is Ex.PE. The cheque in dispute is bearing no.0558975 dated

04.06.1996 and a similar number is mentioned in this application Ex. PE. This means that accused/petitioner knew the fact that there was insufficient amount in his account and he had issued the cheque and then immediately moved the application in order to avoid his liability. Moreover, the accused/petitioner himself lodged a DDR with the police on 21.07.1997. As per this DDR, two cheques, bearing no. 0558975 and 0558976 were lost on 01.06.1996 and this DDR was registered on the basis of an affidavit dated 06.06.1996. However, In the application Ex. PE, Cheque No. 0558976 is not mentioned. Moreover, this DDR was got registered after a lapse of more than one year from the loss of the cheques without any explanation. The complaint was filed on 30.09.1996 and the accused-petitioner was summoned to face trial vide order dated 10.10.1996. The accused-petitioner refused to accept service. As per order dated 29.11.1996, he appeared in the Court on 05.03.1997 and was released on bail. So this DDR was got registered even after the appearance of the accused-petitioner in the court as this DDR is dated 21.07.1997. This conduct shows that the accused/petitioner created evidence of the DDR later on. Thus, the complainant-respondents have been able prove the issuance of cheque by the accused/petitioner in order to discharge his legal liability.

13. As per letter Ex. PX, the Branch Manager of the Punjab State Cooperative Supply and Marketing Federation Limited Bhikhiwind, Tehsil Patti, Distt. Amritsar, was authorized for the encashment of the Cheque No. 0558975 dated 04.06.2006. During the pendency of the Appeal, vide an application under section 391 of Cr.P.C., Resolution dated 05.04.1995 was

brought on record as Ex. DX. As per Ex.DX the District Managers and General Managers/Managers of the concerned plant of Markfed were authorized to file complaints and petitions under Negotiable Instrument Act and as per this resolution, the Managing Director, Markfed was authorized to delegate his powers to any officer for signing and verifying the complaints. The complainant/respondents brought on record a copy of order dated 23.02.1999, vide which the powers were delegated to the Branch Officer of Markfed, on the ground that they knew the factual position of the case. So, in view of this letter dated 23.02.1999 and in view of the statement of Tilak Raj, a Senior Assistant of Markfed, Amritsar, who was examined as RW2 and stated that Branch Manager of Bhikhiwind, was authorized to file the complaint and he had brought the original letter with him. Apparently, the complaint was filed by a competent person.

14. In view of the aforementioned discussion, no fault can be found with the well-reasoned judgments of the Trial Court dated 18.09.2000 and the Lower Appellate Court dated 30.01.2009. Therefore, the present petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

January 09, 2025
sukhpreet

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