(2019) 11 P&H CK 0140

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 2014 Of 2019

Nathi Ram APPELLANT

Vs

State Of Haryana And Others RESPONDENT

Date of Decision : 26-11-2019

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 313, 357(3)

Citation : (2020) 1 RCR(Criminal) 638

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Anuj Ballian

Judgement

Amol Rattan Singh, J

1. By this petition, the petitioner challenges, by way of a revision, the orders passed by the learned trial court (Judicial Magistrate First Class, Panchkula), as also the appellate court (Additional Sessions Judge, Panchkula), dated 06.09.2018 and 28.05.2019 respectively, by which he has been convicted for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and thereafter sentenced to undergo rigorous imprisonment for a period of one year, with him also having been directed to pay compensation to the tune of Rs.28,00,000/- to the complainant (by citing sub-section (3) of Section 357 of the Cr.P.C., in default of payment of which he is further to undergo rigorous imprisonment for a period of 6 months.

2. The facts of the case, as taken from the judgment of the learned trial court, are that the 2nd respondent herein, which is seen to be a firm, instituted a criminal complaint through its partner, stating therein that it was running a business of purchasing, selling and manufacturing poultry feeds and other allied products, with the petitioner and the firm of which he is stated to be a partner, running a poultry farm. The firm of the petitioner is impleaded as the 3rd respondent herein (and accused no.1 in the complaint before the trial court). The

accused were stated to be purchasing poultry feeds from the complainant since 17.06.2014 and were under a liability to pay Rs.34,99,794/-on account of such purchase and therefore, in order to discharge (a major part of) such liability, they issued two cheques, bearing nos.001532 and 001535, both on 25.02.2015, for a total amount of Rs.28,00,000/-, in favour of the complainant firm.

However, upon the said cheques being presented they were dishonoured by the bank concerned, with the remark that the funds in the account against which the cheques were issued, were insufficient, with a memo dated 25.02.2015 itself stated to have been received to that effect from the bank by the complainant.

A legal notice is stated to have been served upon the accused by the complainant on 22.03.2015, asking them to make good the payment, but upon that too not having been honoured, the complaint came to be instituted.

3. Upon preliminary evidence led, the trial court summoned the accused.

What is important to notice here is that in the complaint there were four accused, whose names are given as below (taken from the memo of parties in the complaint itself):-

"1. Parmeshwar Poultries through partner/authorized signatory Sh. Nathi Ram, r/o vill. Mauli, Teh. & Distt. Panchkula.

2. Nathi Ram partner of Parmeshwar Poultry Farm, r/o vill. Mauli, Teh.& Distt. Panchkula.

IInd Address: Nathi Ram, partner of Parmeshwar Poultry Farm, r/o vill. Samanwa, Teh. Raipur Rani, Distt. Panchkula.

3. Mahipal Singh Rana, partner of Parmeshwar Poultry Farm, r/o vill. Mauli, Teh. Barwala, Distt. Panchkula.

IInd Address:

Mahipal Singh Rana s/o Sh. Jahan Singh, partner of Parmeshwar Poultry Farm, r/o H.No.B-9/15, Galii No.2, Ward no.86, Gokulpur, behind Patrol Pump, Delhi.

4. Nirmala Devii w/o Sh. Nathi Ram, partner of Parmeshwar Poultry Farm, r/o vill. Mauli, Teh. Barwala, Distt. Panchkula.

IInd Address:-

Nirmala Devi w/o Sh. Nathi Ram, partner of Parmeshwar Poultry Farm, r/o vill. Samanwa, Teh. Raipur Ranii, Distt. Panchkula."

However, proceedings against accused no.3 and 4, i.e. Mahipal Singh Rana and Nirmala Devi, "were dropped" vide an order passed on 07.11.2016 by the trial court (as stated in its judgment, with learned counsel for the petitioner having annexed a copy thereof as Annexure P-2 with the petition).

A case having been prima facie established against the remaining two accused, i.e. the firm (respondent no.3 herein) and the present petitioner, they were served with a notice of accusation on 17.02.2017, to which they raised a plea of not being guilty and were consequently tried thereafter.

4. Though the evidence led by the parties need not be actually gone into at all at this stage because learned counsel for the petitioner actually addressed arguments primarily on the issue that with the firm itself not having been held guilty of any offence by both the courts below, the petitioner as the partner thereof could not have been held guilty and sentenced to imprisonment, especially with proceedings against the other two persons who were arraigned as accused, having already "been dropped", however, since in the grounds of revision, even the merits of what was contended in the complaint have been assailed, as regards the liability of the accused, a brief reference thereto would be in order.

5. It is seen that the complainant relied upon various documents by way of evidence, including income tax returns, a partnership deed, authority letter, invoices & bills, the two cheques in question, two memos & legal notice and postal receipts etc., other than examining the partner of the complainant firm.

As per the judgments of the learned courts below, the present petitioner simply made a statement under Section 313 of the Cr.P.C., claiming complete false implication and his own innocence.

6. The learned trial court, upon examining the evidence, found after considering the invoices and the cheques issued, that the accused had actually issued cheques towards discharging their outstanding liability, which, as per the memos of the bank, had been dishonoured due to insufficient funds.

The legal notice sent by the complainant was also found to be proved by way of postal receipts, and consequently, it was held that even as per "preponderance of probabilities", the petitioner was guilty of having committed the offence in issue.

It was also noticed by that court that the petitioner, Nathi Ram, partner/ authorised signatory of Parmeshwar Poultry, had not actually denied his signatures on the cheques in question and therefore, the onus to prove that they were not issued to discharge a liability had shifted on to the accused, which in the face of the documentary evidence, (they) had failed to discharge.

Consequently, the petitioner was convicted and sentenced as already stated at the outset.

7. It is seen that the appeal filed before the learned Additional Sessions Judge, Panchkula, was filed by both, the present petitioner (as appellant no.2), as also the remaining accused before the trial court, i.e. his firm, Parmeshwar Poultries (presently respondent no.3).

8. That court, after examining the evidence led before the trial court, as also the arguments raised before it, eventually reached the same conclusion as had the

trial court, and therefore dismissed the appeal.

9. It is pertinent to mention that an argument had been raised before that court that actually the accused firm had stopped functioning and therefore there was no question of it being supplied feed etc. by the complainant.

That argument was however rejected upon a finding being recorded that the account statement, Ex.C5, showed that the cost of the total feed supplied to the accused was for an amount of Rs.1,01,03,681/-, of which amount the accused had in fact paid Rs.66,03,887/-; and hence, there was (obviously) an outstanding amount of Rs.34,99,794/- remaining to be paid.

It was further recorded that in fact the amount to be paid as per the cheques in question was only Rs.28,00,000/- (i.e. about Rs.7,00,000/- less than what was found to be due by the complainant to the accused), and therefore if the other contention of the accused was to be believed, that the cheques had been lying with the complainant who had misused them, the amount filled in the cheques would not have been for a lesser amount than what was due.

The income tax return led by way of evidence was also referred to by the appellate court to come to that conclusion.

10. Before this court, when the matter had come up for hearing on August 22, 2019, learned counsel for the petitioner had relied upon a judgment of a co-ordinate Bench of this court in Bhagwan Singh v. Adarsh Chhibbar and another 2014 (13) RCR (Criminal) 165, to submit that once no specific allegation was made with regard to the petitioners' role in the firm (which was the first accused) with the proceedings against the other petitioners (i.e. accused no.2 and 3), having been dropped, the conviction of the petitioner alone was uncalled for.

(Though in that order of this court, dated 22.10.2019, it was also recorded that the petitioner in his personal capacity was discharged by the trial court, however, as a matter of fact that is obviously an erroneous observation made by me).

11. Be that as it may, notice of motion had not been issued at that stage, with the matter therefore adjourned for further consideration to the next date of hearing, i.e. August 26, 2019, on which date learned counsel for the petitioner had again reiterated that after discharging two partners of the firm, the petitioner alone could not have been prosecuted and eventually convicted.

That contention I had not been, prima facie, in agreement with (as recorded in the said order), in view of the fact that the petitioner undoubtedly had been arraigned as an accused and charged with the offence in his capacity as a partner of the firm.

Learned counsel for the petitioner having thereafter argued that the complainant could not even prove the bills in discharge of which the petitioner was stated to have issued the cheques in question, notice of motion had been issued to respondent no.2 only.

12. On the next date of hearing, i.e. 03.09.2019, learned counsel for the petitioner had produced in court notices issued by dasti process, with him stating that the respondent firm (respondent no.2) had been served through the daughter of the partner of the firm, as per the report on the notices.

However, the turn of the case having come up after court hours, the matter had been adjourned to 17.10.2019, with it to be shown in the urgent motion list to determine as to whether the respondent complainant would appear to contest the petition or not.

On that date again none had appeared for the complainant, and even while observing that whether or not a firm could be deemed to be served through the daughter of its partner would be a moot question, yet, upon hearing learned counsel for the petitioner, judgment had been reserved.

13. Mr. Ballian, learned counsel for the petitioner had, on that date, pointed to paragraph 19 of the judgment of the trial court, wherein it was held as follows:-

"Now comes to the question as to whether the guilt of the accused can be proved beyond every shadow of reasonable doubt on the basis of the presumptions u/ss 118(a) and 139 of the said Act. It is settled proposition of law that the burden of any party can be discharged with the help of presumptions of law in his/her/its favour. Even otherwise, the complainant has specifically proved on record that the accused issued/drawn/executed the cheque in question in order to discharge his liability qua a legally enforcable debt and liability of Rs.28,00,000/-."

He had further pointed to the last paragraph of the judgment, i.e. paragraph 21, wherein it has been held as follows:-

"Accordingly, accused Nathi Ram, partner/authorised signatory of Parmeshar Poultry is hereby held guilty for commission of offence punishable u/s 138 of the N.I. Act. Now to come up after lunch hour for order on question of sentence."

(Emphasis applied in the present judgment only).

14. Hence, learned counsel had submitted that very obviously it was only the petitioner in his personal capacity, by name, who has been held guilty for the commission of an offence punishable under Section 138, without the firm having been held guilty, to discharge whose liability (as per the case of the complainant), the cheques had been issued.

15. Upon query as to whether the aforesaid contention had been raised before the appellate court or not, Mr. Ballian admitted that it was not seen to be raised, with in fact accused no.1 (i.e. the firm itself of which the petitioner was a partner), having been appellant no.1. Yet, he submitted that it being a purely legal argument, to the effect that once the company/firm to discharge whose liability the cheque issued is not arraigned as an accused or had not been held guilty, a partner/Director can alone not be held guilty, and therefore even at this stage, this court would not uphold legally unsustainable judgments.

In support of his argument to the effect that a Director/partner of a company/ firm (as the case may be) alone cannot be held guilty, he relied upon the following judgments:-

i) Bhagwan Singh v. Adarsh Chhibbar and another , 2014 (13) RCR (Crl.) 165;

ii) Aneeta Hada v. M/s Godfather Travels and Tours Pvt . Ltd., 2012 (2) RCR (Crl.) 854;

iii) Raghu Lakshminarayanan v. M/s Fine Tubes, 2007(2) RCR (Crl.) 571;

iv) Monaben Ketenbhai Shah and another v. State of Gujarat and others , 2004(3) RCR (Crl.) 800;

v) Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay , AIR 1961 (SC) 1316;

vi) Rajendran and others v. Shankar Sundaram and others, 2008 (1) RCR (Civil) 891; and

vii) Lakshmi Shanmuga Spinning Mills Ltd. & Ors. v. Provident Fund Inspector , 2015 (41) RCR (Crl.) 355.

16. Upon the aforesaid arguments raised, with none having appeared for the respondent, the judgment had been reserved and the petitioner ordered to be admitted to interim bail to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate concerned, till pronouncement of the judgment.

It is to be noticed that the petitioner was produced before the appellate court from the District Jail, Kaithal, on production warrants issued, on account of him undergoing imprisonment for a similar offence in that jail, and consequently, the appellate court (in the present case) had directed that his custody be handed over to the Superintendent, Central Jail, Ambala, by the Superintendent, District Jail, Kaithal, upon completion of his sentence in the case in which he was confined to the latter jail.

It is to be therefore observed that the sentence of the petitioner has obviously been suspended by this court only in the context of his conviction in Criminal Complaint no.CNR No.HRPK03-010379-2015, instituted at Panchkula, and not in the case in connection with which he was confined in the District Jail at Kaithal. Hence, if his custody had not been handed over to the Superintendent, Central Jail, Ambala, there would be no question of suspension of sentence, which in fact this court (this Bench) should have stated in the order while ordering such suspension.

17. On the merits of the contentions raised, having considered the matter, as regards the contention that there was no liability of the petitioner in the discharge of which the cheques in question had been issued, I see absolutely no ground to interfere with the findings of both the courts below, nothing at all having been shown to this court that the invoices/bills led by way of evidence by

the respondent complainant before the trial court, to show existence of the liability of the firm of which the petitioner is a partner, were forged or fabricated documents (and that therefore those findings are erroneous).

The petitioner even before this court has not shown in any manner, either that the said invoices/bills were forged or fabricated, or that the delivery of goods against those invoices/bills had not been made by the complainant firm to the petitioners' firm.

Hence, with the trial court also having recorded a finding that the petitioner did not deny his signatures on the cheques in question, on the absolute merits of the case I see no reason to interfere with the findings of that court or the appellate court.

18. As regards the contention primarily raised before this court by learned counsel, it would, at first blush, seem very strange that the trial court held only the petitioner, as a partner, to be guilty of the offence (as a reading of paragraphs 19 and 21 of that courts' judgment would show, as reproduced in paragraph 12 of this judgment), with the liability referred to as "his liability" (in paragraph 19), and with paragraph 21 stating that "accused Nathi Ram, partner/ authorised signatory of Parmeshar Poultry is hereby held guilty for commission of offence punishable u/s 138 of the N.I. Act".

19. Yet, what first cannot be lost sight of is, that before the appellate court, it was both, the petitioner, Nathi Ram, as also the other remaining accused in the complaint (his firm) as had appealed against the judgment and order of the trial court, (proceedings against accused no.3 and 4, i.e. the other two partners in the said firm already having "been dropped" by the trial court vide its order dated 07.11.2016, Annexure P-2).

In that appeal, the learned trial court after finding no merit in it, eventually held in the last paragraph of its judgment that the "appeal is dismissed".

Thereafter, it referred to the present petitioner, Nathi Ram, as appellant no.2, stating that he had been brought from the District Jail, Kaithal.

Hence, the appeal that was dismissed, was of both the appellants, i.e. the present petitioner, as also his firm.

It would be also apt to notice that the memo of parties before the appellate court reads as follows:-

"1. Parmeshwar Poultries through partner/authorized signatory Sh. Nathi Ram, resident of village Mauli, Tehsil & District Panchkula.

2. Nathi Ram partner of Parmeshwar Poultry Farm, resident of village Mauli, Tehsil and District Panchkula.

2nd Address: Nathi Ram, Partner of Parmeshwar Poultry Farm, resident of village Samanwa, Tehsil Raipur Rani, District Panchkula.

....Appellants

Versus

1. State of Haryana

2. M/s Kumar Poul Comfed India through its partner Shri Rajiv Garg, son of late Shri Sudershan Lal, resident of House No.147, Sec.4, Panchkula.

...Respondents"

20. In the aforesaid situation, though otherwise in my opinion learned counsel for the petitioner would have been right to submit that without holding the firm of which the petitioner is a partner, guilty, he alone could not have been held guilty of having committed any offence punishable under Section 138 of the Negotiable Instruments Act; yet, even the petitioner obviously accepted that it was both the remaining accused as were held guilty by the trial court, both accused (i.e. the firm and the petitioner himself as its partner), had filed the appeal before the appellate court.

21. Hence, I would hold that the reference to the petitioner alone in paragraphs 19 and 21 of the judgment of the trial court, was a clerical/typographical error by that court, especially in view of the fact that in paragraph 18 of that judgment, it has been stated as follows:-

"Accused have failed to produce on record any substantive evidence oral or documentary to establish the fact that the amount of rs.34,99,794/- was outstanding against accused and accused never issued the cheque Ex.C163 and Ex.C164 for part payment of 28,00,000/- in favour of complainant."

(Emphasis on the word "have" has been applied only in the present judgment).

Thus, very obviously, the trial court was fully aware of the fact that it was trying two accused, especially in view of the fact that the proceedings against the other two accused had been dropped on 07.11.2016 (i.e. against Mahipal Singh Rana and Nirmala Devi), holding that they were only formal partners in the firm, that finding having been arrived at upon an argument raised on behalf of all the accused at that stage, that the other two partners were not necessary parties as they had neither signed the cheques in question, nor were they, in fact, involved with the running of the firm.

22. In view of the above, the contention of learned counsel for the petitioner, that because the trial court has eventually, in two paragraphs of its judgment, held that the petitioner is guilty of having committed the offence, without specifically holding the firm guilty, and therefore the petitioner deserves to be acquitted on that ground alone, is a contention not found to be sustainable, as the reference to the petitioner alone in 2 paragraphs of the judgment of the trial court, in my opinion, very obviously seems to be a wholly clerical/typographical error, with an appeal consciously filed by both the accused, i.e. the firm and the petitioner as its partner, having been dismissed by the appellate court.

23. Hence, the judgment of the trial court is seen to be actually holding both, the petitioner as also respondent no.3 herein, i.e. M/s Parmeshwar Poultries, (through its partner/authorised signatory Nathi Ram), guilty of having committed an offence punishable under Section 138 of the NI Act, with the petitioner as a partner correctly having been sentenced to the term of imprisonment that he has been, by both the courts below.

The compensation ordered to be paid to the complainant, by both those courts, is also upheld, as is the punishment ordered in default of such compensation being paid.

24. As regards the contention of learned counsel for the petitioner on the first date that the petition came up for hearing before this court, to the effect that once the other partners had been discharged the petitioner alone cannot be held guilty of any offence committed, is also an argument that necessarily is to be rejected, because proceedings against the other two partners were dropped by the trial court, accepting the argument raised by the counsel appearing for all the accused (i.e. the firm, the petitioner and his other two partners at that stage), such argument being that the other two partners were neither signatories to the cheques, nor in fact were they involved in the day to day running of the firm, they only being "formal partners".

Well settled law need not be reiterated by citing judgments to the effect that once Directors of a company or Partners of a firm are not found to be involved in the day to day functioning of such company/firm, with them also not being signatories to the cheques as have been dishonoured, naturally they would not be necessary to be proceeded against in any proceedings initiated under the provisions of Section 138 of the Negotiable Instruments Act.

Hence, even the complainant not having challenged that order "dropping proceedings" against the other two partners, and such proceedings having been dropped on the asking of the counsel for all the accused on the aforesaid ground, the petitioner as also the firm of which he was the partner, were correctly proceeded against and held guilty of the offence that they were charged with.

25. Consequently, finding no merit in this petition, it is dismissed.

If the petitioner has already been released from the District Jail, Kaithal, after his conviction for the commission of a similar offence (as stated by the learned appellate court) and has thereafter been released from the Central Jail, Ambala, on the order of this court suspending his sentence in the present case, he be taken into custody to serve the remaining term of his sentence as imposed in the present lis.

Obviously however, if he was not released from the District Jail, Kaithal, in the first place, thereby rendering the suspension of sentence in the present case to be practically meaningless, he would then be taken from the District Jail, Kaithal to the Central Jail, Ambala, upon completion of his term of sentence imposed upon him in the case in which earlier he was committed, with him to thereafter serve sentence in the context of the present case, as imposed by the learned courts below, upheld hereinabove.

