
(2010) 05 P&H CK 0045
In the Punjab And Haryana At Chandigarh

Rajinder Parshad Rana

APPELLANT

Vs

Anil Corporation

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 05 P&H CK 0045

Hon'ble Judges : Mohinder Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohinder Pal, J.—This revision petition is directed against the judgment dated 21.09.2001 passed by the Additional Sessions Judge, Chandigarh whereby appeal against the judgment of conviction and sentence order dated 12.09.2000 passed by the Judicial Magistrate Ist Class, Chandigarh, convicting the petitioner u/s 138 of the Negotiable Instruments Act (for short "the Act") and sentencing him to undergo rigorous imprisonment for one year, was dismissed.

2. The matrix of facts culminating in the commencement, relevant for disposal of the present revision petition and emanating from the record, is that the complainants have filed the present complaint against the petitioner, by invoking the provisions of Section 138 of the Negotiable Instruments Act, 1881.

3. The case set up by the complainants was that respondent No. 1 is the proprietorship concern of respondent No. 2 and have been purchasing pig iron and caste scraps on different dates on credit from the complainants. The complainants were keeping accounts for the purchase made by the accused-petitioner and a running account of the accused was maintained in the account books. On 31.03.1997 accused-petitioner were to pay a sum of Rs. 3,81,778/-, for which a request was made to them to make the payment. Interest was accrued on the said amount from 01.04.1997 onwards. On 28.10.1998, a cheque bearing No. 123498 dated 28.10.1997 of State Bank of India, Industrial Estate

Branch, Chandigarh for a sum of Rs. 3,81,778/- was issued by the accused-petitioner to clear the liabilities. When the cheque was presented, the same was received back dishonoured along with the remarks "Not Arranged For". Thereafter, the complainants got issued legal notices to the petitioner, calling upon to make the payment within a stipulated time, but in vain. It necessitated the complainants to file the present complaint against the petitioner, for the commission of offence punishable u/s 138 of the Act. On the basis of aforesaid allegations, complainants filed the complaint against the petitioner, in the manner indicated here-in-above.

4. No one has appeared on behalf of respondent M/s Anil Corporation or its proprietor Anil Kumar complainant. Mr. Gautam Kaile, Advocate, however, appeared for U.T., Chandigarh, who earlier was made respondent before the Ist Appellate Court by the complainants but U.T. - respondent is not a party in this revision petition.

5. During the course of arguments, learned Counsel for the petitioner has mainly agitated the judgment of the trial Court on the point that the complainant has been selling pig iron and cast scraps to the petitioner and he has been maintaining accounts for this sale. However, the accounts books have not been produced in the Court. It is also argued that the petitioner has given blank cheque as a security for the purchase of pig iron and cast scraps and later on the same has not been filled to falsely implicate the petitioner in this case. Finally, it has been argued that two legal notices have been issued by the complainant. However, these were not as per the provisions of the Negotiable Instruments Act.

6. I have given my thoughtful consideration to the submissions of the learned Counsel for the petitioner.

7. The argument regarding withholding of the account books by the complainant are devoid of any merit in view of the fact that it is own admission of the petitioner that he has given blank cheque to the complainant. Once the issuance of cheque is admitted, rest of the arguments cannot be given any importance. The petitioner himself is on wrong side of the law as he himself issued the blank cheques. Once the petitioner himself is guilty of his own act, he cannot shift liability on the other party to avoid his liability. Fact that two notices were sent by the complainant to the petitioner is no ground to hold that complainant committed any illegality. Receipt of notices is even admitted by the petitioner in his statement u/s 313 of the Code of Criminal Procedure. Despite the receipt of notices, the petitioner failed to make the payment of the cheque amount. Admittedly, the petitioner who found guilty by two Courts did not bother to return the amount.

8. Lastly, learned Counsel for the petitioner has submitted that petitioner has undergone rigorous imprisonment of seven months out of the total sentence of one year and has prayed that lenient view be taken and the sentence which he has undergone for seven months be treated the sentence as already undergone

and the revision petition be disposed of accordingly.

9. I find no ground to take lenient view in the matter of sentence. Admittedly, petitioner failed to return the cheque amount to the complainant till today. Keeping in view the facts and circumstances of the case, I am of the opinion that the sentence awarded to the revision petitioner commensurates with the offence committed by him. The sentence does not call for any interference. Resultantly, the present petition stands dismissed.