(2008) 04 P&H CK 0123

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 294 of 2007

Sandeep Mittal		APPELLANT
	Vs	
Pardeep Bhalla		RESPONDENT

Date of Decision: April 2, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 29, 29(2), 357, 357(3), 4(1)
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: Amit Jaiswal, for the Appellant; A.S. Parmar, Advocate for Mr. V.K. Chaudhary, for the Respondent

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.
This revision petition has been filed against the conviction order dated 18.9.2006 and order of sentence dated 21.9.2006 passed by the learned Sub Divisional Judicial Magistrate, Talwani Sabo (for short Magistrate) u/s 138 of the NI Act, (for short the Act).

2. Learned Magistrate found the accused guilty of an offence u/s 138 of the Act and imposed the following sentence:-

"15. Learned counsel for the convict has argued that convict is fist offender, sole breadwinner of the family and of young age. Even, during the pendency of the complaint he had offered to make the payment of the cheque even to the extent of double the amount. Thus, taking into note the said factum of lenient may be taken and convict be released on probation.

16. On the other hand, learned counsel for the complainant has argued that the complainant had been dragged to face the lis for several years at a stretch and the

offer upon which much emphasis has been laid, but the same is being made at the stage of hearing the quantum of sentence, which altogether falsifies the arguments put forth by learned counsel for the convict be dealt severally so that it is a lesson to the like minded people.

17. After giving my thoughtful consideration to the rival submissions and taking into note the due assistant accorded coupled with the factum that it is a complaint case qua the bouncing of cheque for sum of Rs. 14,000/- and if the court is not mistaken, it is worth making mention that during the pendency of the present complaint, learned counsel for the convict has expressed in the open Court as to his client being ready to make the payment. Thus, would it be justifiable to send the convict behind bars, when he had otherwise expressed during the trial of the complaint, though the compromise could not be effected even in the Lok Adalat. The court is of the considered opinion that ends of justice shall be squarely met in case the convict is directed to pay double the amount of the cheque i.e. to the tune of Rs. 28,000/- and the said sum shall be paid to the complainant after the expiry of period of appeal or revision, if any and also to deposit Rs. 5000/- as costs in the state exchequer and in default the convict shall undergo simple imprisonment for one month. Amount of cost and sum of Rs. 28,000/- i.e. double the amount of the cheque has been deposited. File be consigned to the record room."

3. Learned counsel for the petitioner contends that the order passed by the learned Magistrate cannot be sustained as it was not open to the learned Magistrate to award compensation to the tune of Rs. 28,000/- and fine of Rs. 5000/-. The contention of the learned counsel for the petitioner is that it was incumbent upon the Magistrate to have imposed a substantive sentence before granting compensation as provided u/s 357 (3) of the Code of Criminal Procedure (for short the Code). In support of this contention learned counsel for the petitioner placed reliance on the judgment of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, wherein Hon''ble Supreme Court was pleased to lay down that trial Magistrate of First Class cannot impose a fine exceeding Rs. 5000/- besides imprisonment but no limit is mentioned in sub-section (3) of Section 357 of the Code and therefore, the Magistrate can award any sum as compensation. While fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant.

4. Learned counsel for the petitioner thereafter placed reliance on the judgment of Hon''ble Supreme Court in the case of Pankajbhai Nagibhai Patel v. State of Gujarat, 2001 (1) RCR (Cri) 343, wherein Hon''ble Supreme Court has been pleased to lay down as under:-

"8. Thus, the non-obstante limb provided in Section 142 of the NI Act is not intended to expand the powers of a Magistrate of first class beyond what is fixed in Chapter III of the Code. Section 29, which falls within Chapter III of the Code, contains a limit for a Magistrate of first class in the matter of imposing a sentence as noticed above,

i.e. if the sentence is imprisonment it shall not exceed 3 years and if the sentence is fine (even if it is part of the sentence) it shall not exceed Rs. 5000/-.

9. Two decisions holding a contrary view have been brought to our notice. The first is that of a Single Judge of the Madras High Court in A.Y. Prabhakar v. Naresh Kumar N. Shah, 1994 MLJ (Crl.) 91 : 1995 CC 83 191. The other is that a Single Judge of the Kerala High Court which simply followed the aforesaid decision of the Madras High Court K.P. Sahdevan v. T.K. Sreedharan, 1996 (2) RCR(Crl.) 396 (Kerala): 1996 (2) Cri LJ 1223: 1996 (1) KLT 40. The learned Single Judge of the Kerala High Court (Balanarayana Marar, J.) dissented from a contrary view expressed in an earlier judgment of the same High Court and had chosen to agree with the view of the Madras High Court held in Prabhakar v. Naresh Kumar N. Shah (supra). What Marar, J. had adopted was not a healthy course in the comity of Judges in that he had sidelined the earlier decision of the same High Court even after the same was brought to his notice. If he could not agree with the earlier view of the same High Court he should have referred the question to be decided by a larger Bench. Learned Single Judge of the Madras High Court did not advance any reasoning except saying that Section 29 (2) of the Code is not applicable in view of the primary clause in Section 142 of NI Act. As pointed out by us earlier, the scope of the said primary clause cannot be stretched to any area beyond the three facets mentioned therein. Hence the two decisions cited above cannot afford any assistance in this appeal.

10. The second contention depends upon the construction of Section 5 of the Code. Before that Section is considered it is advantageous to have a look at the preceding section which is in a way cognate to the provision cited. Section 4(1) of the Code concerns only with offences under the Indian Penal Code but sub-section (2) says that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions of the Code unless any other enactment contains provisions regulating the manner or place of such investigation, inquiry or trial or how otherwise such offence should be dealt with. This means, if an other enactment does not regulate the manner or place of trial etc. of any particular offence the provisions of the Code will continue to control the investigation or inquiry or trial of such offence. Now Section 5 of the Code has to be seen.

"5. Saving - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

11. Non-application of the Code on "any special jurisdiction or power conferred by any other law for the time being in force" is thus limited to the area where such special jurisdiction or power is conferred. Section 142 of the NI Act has not conferred any "special jurisdiction or power" on a Judicial Magistrate of first class That section has only excluded the powers of other magistrates from trying the

offence u/s 138 of the NI Act."

5. Learned counsel for the petitioner also placed reliance on the judgment of Hon''ble Supreme Court in the case of Mangilal Vs. State of Madhya Pradesh, wherein Hon''ble Supreme Court was again pleased to lay down that the court has power to award compensation to the victim even in those cases where the fine does not form part of the sentence imposed by the court. The power of awarding compensation is not ancillary to other sentences but in addition thereto and the said power can also be exercised by the appellate authority or the revisional court.

6. Learned counsel for the petitioner finally placed reliance on the judgment of Hon''ble Madras High Court in the case of Suganthi Suresh Kumar v. Jagadeesan, 2001 (3) RCR (Cri) 87, wherein Hon''ble Madras High Court was pleased to lay down that whenever a Magistrate of first class feels that the complainant should be compensated he can after imposing a term of imprisonment award compensation to the complainant for which no limit is prescribed in section 357 of the Code. It has further been held that provisions of Section 357(3) of the Code can be invoked only when the fine does not form a part and where the sentence of fine has already been imposed unless the sentence of fine is deleted award of compensation cannot be ordered by the court.

7. On the basis of law referred to above learned counsel for the petitioner contended that it is only when a substantive sentence is imposed then compensation can be awarded u/s 357 (3) of the Code. The contentions raised by the learned counsel for the petitioner do not arise for consideration in the present case.

8. Section 138 of the Act reads as under:-

"138. Dishonour of cheque for insufficiency, etc., of funds in the account. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished 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;

Provided that nothing contained in this section shall apply unless;-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing,

to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

9. The reading of Section 138 of the Act shows that the learned Magistrate after convicting a person u/s 138 of the Act can impose a punishment of imprisonment of a term which may extend to two years or with fine which may extend twice the amount of cheque or with both. The reading of the order passed by the learned Magistrate clearly shows that the accused has been punished with imprisonment of fine which is equivalent to twice the amount of cheque and has not awarded the compensation. A sum of Rs. 5000/- has been imposed as costs to be paid to State exchequer. Thus, no fault can be found with the order passed by the learned Magistrate which may call for interference by this court.

10. The contention raised by the learned counsel for the petitioner would be applicable only in case the learned Magistrate would have imposed a fine u/s 29 of the Code as under the said section limit prescribed is as Rs. 5000/-.

11. The Hon''ble Supreme Court in the case of Mangilal v. State of Madhya Pradesh (supra) relied upon by the petitioner has categorically laid down that compensation u/s 357 (3) of the Code can be paid to the victim in those cases where the fine does not form part of the sentence imposed by the court. Once section 138 of the Act itself prescribes the imposition of fine to the tune of double the amount and the power has been exercised by the court under the said provisions of law, provisions of section 357 of the Code in the present case, thus, have no application. In view of what has been stated above, there is no merit in the present revision petition, which is hereby dismissed.