

CASE NO.:
Appeal (crl.) 776 of 2008

PETITIONER:
Sudhir Kumar Bhalla

RESPONDENT:
Jagdish Chand, etc. etc.

DATE OF JUDGMENT: 01/05/2008

BENCH:
S. B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT
O R D E R
REPORTABLE

CRIMINAL APPEAL No. 776 OF 2008
[Arising out of S.L.P. (Crl.) No.2541 of 2007]

WITH
CRIMINAL APPEAL Nos. 780, 781, 779, 782, 777 & 778
OF 2008
[Arising out of S.L.P. (Crl.) No. 2545, 2546, 2548, 2550, 2988, 2990 of 2007]

Leave granted in all the above-said Special Leave
Petitions.

We have seven appeals before us in which the parties are similar. Since all these appeals arise out of common judgments and orders dated 25.01.2007 and 19.02.2007 passed by a learned Single Judge of the High Court of Punjab and Haryana in Criminal Appeal No. 1410-SBA of 2002, Criminal Appeal No. 1411-SBA of 2002, Criminal Appeal No. 1412-SBA of 2002, Criminal Appeal No. 1413-SBA of 2002, Criminal Appeal No. 1433-SBA of 2002, Criminal Misc. Petition No.29090-M of 2001 and Criminal Misc. Petition No.36987-M of 2001. As similar questions of facts and law are involved, therefore, for the sake of convenience they are being heard together and disposed of by this common judgment. Brief facts, which led to the trial of the appellant, are as follows:-

Jagdish Chand - respondent herein and his wife Smt. Ramesh Rani are the proprietors of M/s Mehra Export Corporation and M/s Mehra International, Katra Hari Singh, Amritsar. The firms deal in saffron, herbs and other like goods. M/s Sudhir Kumar Bhalla and Brothers, 25, Green Park, Ludhiana, of which Sudhir Kumar Bhalla - appellant herein is one of the partners, has been purchasing various goods from the firms of Jagdish Chand and Ramesh Rani. The sale price was being paid in cash and at times, through cheques.

In the month of May, 1997, the appellant on behalf of his firm issued six cheques Nos. 442344, 442345, 442346, 442347, 442348 and 442349 dated 01.05.1997, 03.05.1997 and 05.05.1997 in favour of M/s Mehra Export Corporation and M/s Mehra International. Out of those six cheques, two cheques were in the sums of Rs.30,000/- each and four cheques were in the sums of Rs.40,000/- each. All those cheques were drawn in favour of the Indian Overseas Bank,

Ludhiana.

One of the cheques, in the sum of Rs.30,000/-, was stated to have been encashed, whereas the other five cheques have been dishonoured on the ground of 'Exceed Arrangement'. On 20.05.1997, the respondent sent statutory notices under Section 138 (5) of the Negotiable Instruments Act, 1881 [for short 'the Act'] to the appellant, which were despatched through registered post on 24.05.1997. However, the same were received back on 28/29.5.1997 with a report that the addressee was 'not met'. The respondent again sent another notice on 04.06.1997 through courier, which again was not accepted by the appellant and the same was received back on 05.06.1997 with the report of refusal.

It was on 13.06.1997 that the respondent, on his behalf and on behalf of his wife as her attorney, filed five criminal complaints under Section 138 of the Act read with Section 420 of the Indian Penal Code [for short 'the IPC'] in the Court of Chief Judicial Magistrate, Amritsar, against the appellant. On 09.07.1997, the respondent-complainant made a statement that he wanted to withdraw the said complaint with permission to file the fresh complaint. The learned Chief Judicial Magistrate vide his order dated 09.07.1997 passed the following order:-

"In view of the statement given by the complainant, recorded separately, the present complaint is hereby dismissed as withdrawn."

On 12.07.1997, the respondent filed second complaint on similar and practically the same points purported to have accrued on identical causes of action. The second complaint was entrusted to the Court of Judicial Magistrate, 1st Class, Amritsar, who recorded the statement/evidence of the respondent on 12.07.1997. Thereafter, the Judicial Magistrate, 1st Class, vide order dated 23.08.1997 issued summon to the appellant. The appellant appeared on 06.04.1998 before the Judicial Magistrate and filed an application for discharging him in the case. However, on 01.06.1998 the Judicial Magistrate dismissed the said application. After following and adopting the due procedure as prescribed under the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the trial court dismissed the complaint on 06.02.2002 and acquitted the appellant.

Being aggrieved by the order of acquittal of the appellant by the trial court, the respondent filed five criminal appeals, two as an attorney of his wife and three on his behalf, in the High Court.

In April 1998, the appellant approached the Court of Judicial Magistrate, 1st Class, Ludhiana, under Section 156 of Cr.P.C. by way of two separate applications alleging fraud, cheating, tampering of the cheques by the respondent and his wife and prayed that the police be directed to register criminal cases against them. On the directions of the learned Magistrate, FIR No.93 of 1998 was registered against the respondent under Sections 420, 463, 465, 468 and 471 of the IPC, whereas second FIR No.94 of 1998 was lodged against Jagdish Chand and Smt. Ramesh Rani under Sections 420, 463, 465, 468, 471 and 120-B of the IPC at Police Station, Sarabha Nagar, Ludhiana. After investigation, the police filed challans in both the cases in the court. The trial court charge sheeted the respondent and his wife vide two separate orders dated 15.01.2000. They filed two revision petitions against the orders of framing charges against them, which were dismissed by the learned Sessions Judge, Ludhiana, vide separate orders dated 04.06.2001. The respondent and his wife filed two

Criminal Miscellaneous Petitions Nos. 29090 and 36987-M of 2001 in the High Court challenging the validity and correctness of the orders of the learned Trial Magistrate as also of the learned Sessions Judge.

The High Court vide its judgment dated 25.01.2007 allowed the above-said five appeals and convicted the appellant under Section 138 of the Act. By the same order, Criminal Misc. Petitions Nos. 29090 and 36987-M of 2001 were allowed and FIR Nos. 93 and 94 of 1998 lodged by the respondent and his wife were quashed. By order dated 19.02.2007, the appellant was sentenced to undergo R.I. for one year and to pay a fine of Rs.8 lacs and in default thereof, the appellant shall undergo further R.I. of one year. Hence, the appellant has preferred these appeals.

We have heard the learned counsel for the parties and with their assistance, examined the entire material placed on record.

Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the appellant, assailed the judgment of the High Court inter alia contending:-

(i) that the learned Single Judge erred in not appreciating the statement of the respondent-complainant in which he admitted that all the cheques were filled by him, the date and figures of the amounts were also in his handwriting and the appellant simply had signed the cheques. According to the learned counsel, the cheques in question have been forged and fabricated by the respondent by making material alteration by changing figure in digit from Rs.30,000/- to Rs.3,00,000/- by adding 'zero' at the end of Rs.30,000/- and Rs.40,000/- to Rs.4,00,000/- by adding 'zero' at the end of Rs.40,000/-; and

(ii) that the learned Single Judge erred in not addressing the legal arguments raised on behalf of the appellant that the provisions of Section 138 of the Act are only attracted if the cheques issued in discharge of liability or debt are dishonoured, but not on account of security cheques.

Mr. Ankit Singhal, learned counsel for the respondent, on the other hand, contended that the reasons given by the High Court recording the order of conviction of the appellant are based upon proper appreciation of evidence led by the respondent in the case. He submitted that this Court should be slow to interfere in the well-reasoned and well-merited judgment of the High Court.

We have given our anxious consideration to the rival contentions of the learned counsel for the parties. The arguments put forward by Mr. Patwalia deserve to be accepted.

We have gone through the record of the trial Magistrate placed before us. In support of the complaint filed under Section 138 of the Act, the trial Magistrate examined the respondent on 27.04.1999. On 05.05.2000, the respondent in his cross-examination admitted as under:-

"I have brought the account books for the year 1995-96 and 1996-97. I have seen the ledger for the year 1995-96 where there is a payment of rupees one lac dated 26.10.1995 having been made by the accused to me but the remaining amounts are for an amount of Rs.35,000/- each and at one time it was

for an amount of Rs.40,000/-. Once a payment of Rs.25,000/- was also made in the said year. This ledger relates to the firm M/s Mehra Exports. The payments of Rs.35,000/- each have been made either through cheques or through drafts. I have also seen the ledger book of M/s Mehra International for the year 1995-96. Except Rs.10,000/- all the payments made in this account are either through draft or through cheque. The lowest payment in this account in this year is Rs.10,000/- the maximum payment made by the accused to this firm in this account is Rs.50,000/-. The notices were sent only to the firm M/s Sudhir Kumar Bhalla and Brothers before filing the complaint and not to the partners individually. We did not receive any cheque from the accused bearing No.442344. We never received any advance payment from the accused. As per account books of firm M/s Mehra International for the year 1997-98 a sum of Rs.7,16,672.50 ps. On account of principal amount is due from the accused."

The respondent again stated as under:-
"The cheque No.442347 is in my hands which is dated 5.5.1997 but the same is signed by accused Sudhir Kumar Bhalla. All the cheques which are subject-matter of other complaints are filled in by me and are signed by Sudhir Kumar Bhalla accused. The dates on the cheques are also in my hands. The amount of the cheques in words and figures are also in my hands. I can read the contents of the cheques clearly."

On 05.05.2000, the trial court on the basis of the statement of the respondent-complainant in his cross-examination made the following observations:-

"At this stage, counsel for accused had made a request for giving note regarding the demoneur of the witness as well as to give note on the aforesaid fact so that the document may not be tampered with subsequent. Heard, without commenting upon the demoneur of the witness at this stage. I have observed from cheque No. 442349 dated 3.5.1997 the last zero of the figure written in the column of rupees is separate from the remaining four zeros which are attached with each other in the same flow."

Thereafter, on 21.05.2001 the cheques were sent to Mr. Sardara Singh Parmar, Document Expert, for examination, who in his report dated 21.05.2001 submitted to the Court, opined as under:-

"In view of the reasons stated above, I am of the opinion that the last figure (0) in above mentioned cheque has not been

written in the continuous process by the same person with the same pen and ink, but it has been subsequently changed into by adding figure (0) in the original amount Rs. 40,000/- and it is free hand forgery."

Mr. Sardara Singh Parmar was examined as DW-3 before the trial court on 13.08.2001 and deposed as under:-

"I am of the opinion that the last figure zero in above mentioned cheque has not been written in the continuous process by the same person with the same pen and ink, but it has been subsequently changed into by adding figure zero in the original amount Rs. 30,000/- and it is free hand forgery. The reasons have already been given in my report dated 21.5.2001. It consists of 6 pages and it is Ex.DW3/1. It has been prepared by me signed by me and is correct. One photograph chart bearing the photograph cheque No. 442345 dt. 5.5.97 is Ex.DW3/2, one negative is Ex.DW/3."

As noticed above, the Judicial Magistrate vide his judgment dated 06.02.2002 acquitted the appellant of the charge under Section 138 of the Act and consequently dismissed the complaint of the respondent. The learned Single Judge of the High Court, after hearing the learned counsel for the parties, recorded the conviction of the appellant vide order dated 25.01.2007 for an offence under Section 138 of the Act, which reads as under:-

"Lastly, it was contended by the learned counsel for Sudhir Kumar Bhalla that the figures of Rs.30,000/- and Rs.40,000/- mentioned in the cheques were interpolated by adding 'zero' to make the same Rs.3,00,000/- and Rs.4,00,000/-. He contended that there is evidence of the handwriting expert to establish the afore-stated fact and the trial court had rightly dis-believed the claim of Jagdish Chand on this court.

The contention of the learned counsel for Sudhir Kumar Bhalla is misplaced. The trial court had clearly fallen in error by ignoring the fact that the cheques were not only filled in figures, but in words as well, according to which Rs.3 lacs and Rs.4 lacs were written thereon. Even though, the handwriting expert opined that the zero has been added in the cheques subsequently, but it was clearly in consonance with the wishes of Sudhir Kumar Bhalla, who had issued the cheques by depicting the amounts in words also.

That apart, there is cogent evidence on record in the shape of original bills and

the complete details of the prices of the goods supplied and the registers of account, which could not be countered by Sudhir Kumar Bhalla during the course of evidence. In view of the overwhelming evidence in favour of Jagdish Chand, the findings of the trial court awarding an acquittal to Sudhir Kumar Bhalla are unsustainable.

On the basis of the above discussion, it is held that Sudhir Kumar Bhalla, who was one of the partners of M/s Sudhir Kumar Bhalla & Brothers, Ludhiana, issued the cheques in question to discharge the liability of his firm and on presentation thereof by Jagdish Chand and Ramesh Rani, the same were dishonoured. Thus, he had committed an offence punishable under Section 138 of the Act. This court holds him accordingly guilty for the same in each of the appeals.

For the reason that the findings qua interpolation in the cheques in question have been categorically set aside, the proceedings against Jagdish Chand and Ramesh Rani initiated in the court of Judicial Magistrate, 1st Class, Ludhiana, pursuant to FIR Nos. 93 and 94 of 1998 registered at Police Station Sarabha Nagar, Ludhiana, which have been assailed in Criminal Miscellaneous Petitions Nos. 29090-M and 36987-M of 2001, must, as a logical consequence, fail.

In view of the above, the criminal appeals and the criminal miscellaneous petitions filed by Jagdish Chand and Ramesh Rani are accepted. The proceedings taken against Jagdish Chand and Ramesh Rani in pursuance to FIR Nos. 93 and 94 of 1998 registered at Police Station Sarabha Nagar, Ludhiana, are also quashed."

On examination of the above-stated findings of the learned Single Judge in the judgment impugned before us, we find that the learned Single Judge has not addressed himself on the legal question raised before him by the appellant that the criminal liability of the appellant under the provisions of Section 138 of the Act are attracted only on account of the dishonour of the cheques issued in discharge of liability or debt, but not on account of issuance of security cheques. The learned Single Judge has also not given cogent, satisfactory and convincing reasons for disbelieving and discarding the pre-charge evidence of the appellant corroborated by the evidence of the expert opinion in regard to the interpolation in and fabrication of the cheques by adding one more figure '0' to make Rs.30,000/- to Rs.3,00,000/- and similarly adding one more figure '0' to make Rs.40,000/- to Rs.4,00,000/-. In the backdrop of the facts of these cases, we are of the opinion that the judgments and orders of the High Court cannot be sustained on the premise that the High Court has not addressed itself on the above-said two legal questions raised by the appellant and, therefore, the impugned

judgments and orders dated 25.01.2007 and 19.02.2007 are set aside. The interest of justice should be sub-served if the matters are remitted to the High Court to decide the appeals filed by the respondent against the appellant and criminal miscellaneous petitions seeking for quashing the first information reports registered against the respondent and his wife by the police for commission of the offences stated in FIR Nos.93 and 94 of 1998. Needless to say that any observation made by us in this judgment shall not be construed as an expression of opinion on the merits of the cases, which shall be decided by the High Court on their own merits in accordance with law.

The appeals shall stand disposed of in the aforesaid terms.

JUDIS