

Neutral Citation No. - 2024:AHC-LKO:15310

Reserved on:- 13.12.2023

Pronounced on:- 21.02.2024

Court No. - 13

Case :- CRIMINAL REVISION No. - 619 of 2020

Revisionist :- Ravindra Pratap Singh

Opposite Party :- State Of U.P. And Anr.

Counsel for Revisionist :- Abhishek Singh, Sushil Kr Singh

Counsel for Opposite Party :- G.A., Raja Ram, Rishabh Raj

Hon'ble Rajeev Singh, J.

1. Heard Shri Jyotindra Mishra, Sr. Advocate assisted by Shri Sushil Kr. Singh and Shri Abhishek Singh, learned counsel for the applicants as well as Shri Rishabh Raj, learned counsel for the private respondent and perused the record.

2. The present revision is filed against the judgement and order dated 23.10.2020 passed by the Appellate Court, i.e., learned Additional Sessions Judge, Court No. 1, Lucknow in Criminal Appeal No. 148 of 2019 (*Ravindra Pratap Singh vs. State of U.P. and another*) as well as the order dated 12.04.2019 passed by learned Additional Court Room No. 5, Lucknow in complaint case No. 6650 of 2012 (*Ashok Singh vs. Ravindra Pratap Singh*) by means of which revisionist is convicted for the terms of one year simple imprisonment along with fine of Rs. 35,00,000/- and in default of payment further imprisonment for the term of three month.

3. Learned counsel for the revisionist submitted that complainant/private respondent developed a case in his complaint dated 07.06.2010 that revisionist took loan of Rs. 22 lakhs from him; and towards discharging his liability and repayment, revisionist issued a cheque of

Bank of Baroda bearing No. 726716 dated 17.03.2010 amounting Rs. 22 lakhs. It was further alleged in the said complaint that the cheque was presented by complainant to his bankers, namely, I.D.B.I. Bank, Main Branch, Lucknow for collection, but the said cheque was dishonoured and returned on 07.05.2010 with an endorsement "*payment stopped by drawer*". It was further alleged that the complainant through his counsel sent notice dated 18.05.2010 to revisionist through registered post by which demand of Rs. 22 lakhs was raised, but neither reply of the said notice was given nor the said amount was paid.

4. Learned counsel for the revisionist further submitted that statement of complainant recorded U/s 200 Cr.P.C. was submitted in the form of affidavit, but neither in the complaint filed U/s 138 of N.I. Act nor in the statement of complainant U/s 200 Cr.P.C., the details of the bank account from which sum of Rs. 22 lakhs was withdrawn as well as the date and time of withdrawal of aforesaid amount for giving loan to revisionist and the date and time of handing over the amount to revisionist were mentioned.

5. Learned counsel for the revisionist further submitted that complainant was cross-examined on 29.11.2017 and in his cross examination, he categorically stated that he withdrew sum of Rs. 22 lakhs from the bank situated at District- Faizabad and went to the house of revisionist at Sultanpur for handing over the same in cash to him, thereafter, when he requested for refunding the aforesaid money, revisionist gave him a cheque; in his cross-examination complainant further admitted that it was not in his memory that when the said cheque was given to him by revisionist.

6. Learned counsel for the revisionist further submitted that statement of revisionist was recorded U/s 313 Cr.P.C. in which he categorically stated that no alleged notice was received to him, hence, no reply was

given; he also stated that the said cheque was lost on 12.03.2010 and missing report was also lodged by him at Police Station- Kotwali Udaipur, District- Pratapgarh on 12.03.2010; he also stated that no cheque was given to complainant by him.

7. Learned counsel for the revisionist further submitted that it was obligatory on the part of complainant to establish his case by giving the details of the bank account from which the amount of Rs. 22 lakhs was withdrawn along with the date and time of withdrawal, and also by giving the details of the date and time on which the alleged amount was handed over to revisionist. It has further been submitted that complainant has admittedly not disclosed the details of the account from which the amount of Rs. 22 lakhs was withdrawn including date and time. It has further been submitted that complainant admitted in his deposition before the court concerned that it was not in his memory that when the said cheque was handed over to him by revisionist, therefore, merely on the basis of presumption, learned trial court allowed the aforesaid complaint and learned appellate court rejected the appeal ignoring the provisions of Section 139 of N.I. Act.

8. In support of the above submissions, learned counsel for the revisionist referred to and relied upon the decisions of Hon'ble Apex Court passed in the following cases:-

(i) *Anss Rajashekar vs. Augustus Beba Ananth* reported in *II (2019) BC 234 (SC)*,

(ii) *Basalingappa vs. Mudibasappa* reported in *Crl. Appeal No. 636 of 2019 (arising out of SLP (Crl.) No. 8641 of 2018)*,

(iii) *K. Subramani vs. K. Damodara Naidu* reported in *(2015) 1 SCC 99*,

(iv) *Vijay vs. Laxman and another* reported in *(2013) 3 SCC 86*,

(v) *M. Manohar Reddy and another vs. Union of India and others* reported in (2013) 3 SCC 99.

9. After relying upon the above judgements, learned counsel for the revisionist further submitted that no loan amount was given by complainant, on the contrary, as onus was shifted on him to prove his case as pleaded, as he claimed that he withdrew the said amount from the bank, but he deliberately not placed the statement of account from which sum of Rs. 22 lakhs was withdrawn, thereafter, it could not be presumed that he withdrew the said amount. It has, thus, been submitted that learned trial court failed to consider the contents of complaint, deposition of the revisionist as well as complainant and the statutory provisions of Sections 139 and 118 of N.I. Act.

10. Learned counsel for the complainant vehemently opposed the prayer of revisionist. He submitted that loan of sum of Rs. 22 lakhs was taken by revisionist, but later on, he tried to avoid to repay the same and when complainant insisted for returning the said amount, in that regard, the cheque in question was given which was placed in the bank, but the same was dishonoured with the endorsement as discussed above, thereafter, notice for returning the said amount was given but no reply was given by revisionist. He further submitted that vague reply/statement was given by revisionist in his statements recorded U/s 313 Cr.P.C., but it could not be disputed that the cheque was signed by revisionist and false story was developed by him by stating that missing report of alleged cheque was lodged by him.

11. In support of his submissions, learned counsel for the complainant referred to and relied upon the decisions of Hon'ble Apex Court passed in the following cases:-

- (i) *APS Fores Services Pvt. Ltd. vs. Shakti International Fashion Linkers and others* reported in *AIR 2020 SC 945*,
- (ii) *Uttam Ram vs. Devinder Singh Hudan and another* reported in *(2019) 10 SCC 287*,
- (iii) *State of Andhra Pradesh vs. Pituhuk Sreeinvanasa Rao* reported in *(2000) 9 SCC 537*,
- (iv) *Kishan Rao vs. Shankargouda* reported in *(2018) 8 SCC 165*,
- (v) *Kumar Exports vs. Sharma Carpets* reported in *(2009) 2 SCC 513*,
- (vi) *Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and others* reported in *(2015) 3 SCC 123*.

12. Further submission of learned counsel for the complainant is that it shall be presumed that the cheque was issued by the revisionist unless contrary is proved, therefore, there is no illegality in the order passed by learned trial court as well as appellate court and the revision is liable to be dismissed.

13. Considering the submissions of learned counsel for the revisionist, learned counsel for the complainant and going through the contents of revision, impugned judgements, trial court record, deposition of parties recorded before the trial court as well as other relevant documents; it is evident that it is alleged in the complaint by the private respondent/complainant that on the request of revisionist, he withdrew sum of Rs. 22 lakhs from his bank situated at District- Faizabad, thereafter, he came to Sultanpur and handed over all the aforesaid amount in cash to revisionist. It is also alleged that revisionist started avoiding the complainant for returning the said amount and when he insisted the revisionist then the cheque in question was given which was placed in the

bank and the same was dishonoured with the endorsement that "*the payment has been stopped by the drawer*", thereafter, the notice was also given to revisionist for refund of the said amount. It is evident that revisionist denied the case of complainant in relation to payment of any loan amount, and he has also categorically stated that no notice was served on him, hence, reply could not be given.

It is obligatory on the part of the complainant to establish his case, mentioned in complaint, on the basis of evidence by giving the details of the account as well as date and time of the withdrawal of the said amount which was withdrawn for the revisionist, and also the date and time of the payment made to the revisionist including the date and time of receiving of the cheque. But in the present case, complainant failed to give the details of the statement of account from which he withdrew the alleged amount, and he admitted in his deposition that he has no knowledge about the fact that when he received the said cheque from revisionist.

The aforesaid judgements relied upon by learned counsel for the complainant are not applicable in the present case as it is settled position that initially in a case U/s 138 of N.I. Act burden is placed on the defendant by virtue of Section 118 of N.I. Act, it can be rebutted by him by showing a preponderance of probabilities that such consideration as stated in the plaint does not exist and once the presumption is so rebutted, the said presumption "disappears" and the burden shifts back to the plaintiff who has also the legal burden.

The complainant has failed to prove his case that the cheque was issued towards discharge of a lawful debt specially when the complainant has failed to disclose details of his Bank Account and date when he withdrew the amount in question and paid to the revisionist as well as the date when he obtained the cheque. Therefore, there are glaring

inconsistencies indicating doubt in the complainant's version, hence, the conviction and sentence cannot be sustained.

14. Thus, this Court is of the view that the order dated 23.10.2020 passed by the Appellate Court, i.e., learned Additional Sessions Judge, Court No. 1, Lucknow in Criminal Appeal No. 148 of 2019 (***Ravindra Pratap Singh vs. State of U.P. and another***) and the order dated 12.04.2019 passed by learned Additional Court Room No. 5, Lucknow in complaint case No. 6650 of 2012 (***Ashok Singh vs. Ravindra Pratap Singh***) are **set aside**. The aforesaid complaint case no. 6650 of 2012 (***Ashok Singh vs. Ravindra Pratap Singh***) is hereby **dismissed**.

15. With the above directions, the present revision is **allowed**.

16. Office is directed to remit back the trial court record, forthwith.

Order Date :- 21 February, 2024

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