

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. A-753-MA-2015 (O&M)

Date of decision : July 24, 2015

Kulbir Singh

... Appellant

vs.

Pawan Puri

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.D. Sharma, Advocate
for the appellant.

Surinder Gupta, J

CRM-14360-2015

In view of the submissions that appellant, under wrong legal advice filed appeal before Additional Sessions Judge, Amritsar, which was later on dismissed being not maintainable, the delay in filing the appeal is condoned.

CRM is allowed.

Crl. Misc. No. A-753-MA-2015

As per complainant-appellant he had taken loan from M/s Bharat Enterprises situated at 54, Ist Floor, Railway Link Road, Amritsar and as security had given four blank cheques to the firm. The respondent was working as collection agent/clerk of the said firm and had been visiting him for collection of installment on daily basis. On 19.3.2009, the respondent approached the complainant with his four cheques and other documents signed by him. Thereafter the complainant visited the premises of M/s Bharat Enterprises on 20.3.2009 and 21.3.2009 but found the premises locked. On 24.3.2009, the respondent again met the complainant and asked him to pay ₹20,000/- to get his blank cheques destroyed. Thereafter the petitioner issued a legal notice to the accused and ultimately filed this complaint.

The trial court after recording preliminary evidence summoned the respondent to face trial for offence punishable under Sections 379/420 IPC. In pre-charge evidence the petitioner himself appeared as CW-1 and examined one Hardial Singh as CW-2. Thereafter, the respondent was

charge sheeted for offence punishable under Section 379/420 IPC vide order dated 20.7.2013.

Vide judgment dated 6.3.2014, the trial court acquitted the respondent of the charges framed against him with the observations in para 10 of the judgment which reads as follows :-

“(I) The complainant in his complaint has alleged that the complainant had dealings with M/s Bharat Enterprises situated at 54 Ist Floor, Railway Link Road, Amritsar, for the last 5/6 years. But the complainant has not proved it by either examining any witness from the M/s Bharat Enterprises nor placed upon record any such document which could have proved that the complainant had the dealings with the said firm. Moreover, the complainant has also not proved that the accused Pawan Puri was the employee of the said firm. Complainant could have examined any witness from M/s Bharat Enterprises to prove these facts, but he has not examined any witness from M/s Bharat Enterprises.

(II) The allegations of the complainant that on 19 March, 2009 the accused had come to complainant and had shown to the complainant four blank cheques bearing no. 0320817, 0320818 and 370397, 370398 along with document file which was duly signed by the complainant and which were given to M/s Bharat Enterprises as security for Daily basis Loans has also not been proved. Neither the original cheques nor the copies of any such cheques has been placed upon record by the complainant nor any witness has been examined from the M/s Bharat Enterprises to prove that such documents were given as security for Daily basis Loans.

(III) The next contention of counsel for the complainant that the accused has stolen the abovesaid cheques and other documents from office of M/s Bharat Enterprises with malafide intention for unlawful gain and to blank mail the complainant has not been proved because it has not been proved by

examining any witness from the M/s Bharat Enterprises nor any such complaint has been placed and proved on record which shows that the M/s Bharat Enterprises had ever filed any complaint against the accused for the alleged stolen cheques.”

Learned counsel for petitioner has argued that the blank cheques were given to M/s Bharat Enterprises which were in fact property belonging to petitioner. The respondent had stolen the cheques from the premises of M/s Bharat Enterprises in order to play fraud with the petitioner to extract ₹20,000/- from him. The trial court has not looked into the above aspect while acquitting the respondent for offence punishable under Sections 379/420 IPC. He further submits that the petitioner had also moved application before the trial court to prove that the petitioner was working with M/s Bharat Enterprises but that application was declined.

On perusal of the judgment and going through the submissions of learned counsel for petitioner, I find no reason to agree with the submissions of learned counsel for petitioner. “Theft” has been defined in Section 378 IPC, which reads as under :-

“378. Theft - *Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.”*

In the instant case, the petitioner has alleged that he had given the cheque to M/s Bharat Enterprises. Even if the version of petitioner be believed, the cheques were in possession and custody of M/s Bharat Enterprises and if the same have been removed from the custody of M/s Bharat Enterprises, the action against respondent could be initiated on the complaint of that concern. The remedy available to the petitioner is to call for the return of his cheques by M/s Bharat Enterprises and from perusal of the judgment of the court below I do not find that at any point of time the petitioner had enquired about his cheques from M/s Bharat Enterprises. It is alleged that the respondent was an employee of M/s Bharat Enterprises and even if he was in custody or in possession of documents entrusted to M/s Bharat Enterprises by the petitioner, it does not make out that he has

stolen those documents from the premises of M/s Bharat Enterprises.

The offence of cheating against respondent is also not made out from the allegations as levelled by the petitioner so as to attract provisions of Section 420 IPC to this case.

For the foregoing reasons, I find no factual or legal infirmity in the order of trial court calling for interference in this appeal.

This appeal has no merits and is dismissed.

(Surinder Gupta)
Judge

July 24, 2015
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