In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 806 of 2005 (O&M)
Date of decision: 12.8.2015

Kanwar Ranjit Singh Sandhu ......Petitioner

Versus

M/s Kalgidhar Transport Company Regd. and another ......Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sukhbir Singh, Advocate for the petitioner.

None for the respondents.

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SABINA, J.

Petitioner along with respondent No. 2 had faced trial in a complaint filed by the complainant-respondent No. 1 under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) qua dishonour of cheque dated 1.7.2000 in the sum of ₹ 4,15,000/. Trial Court vide judgment/order dated 16.3.2004 ordered the conviction and sentence of the petitioner under Section 138 of the Act. Aggrieved against the said judgment/order of his conviction and sentence, petitioner preferred an appeal and the same was dismissed by the Appellate Court vide order dated 15.4.2005. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that the cheque in question was presented for encashment by the complainant after the bus sold to the petitioner had been taken in

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possession by the complainant. Hence, the cheque in question could not be said to have been issued for discharge of a legal liability. Complainant had also filed a suit for recovery of the cheque amount in question and the said suit was dismissed by the Civil Court vide judgment/decree dated 19.5.2007. The said decree had become final.

None has appeared on behalf of the respondents.

In the present case, the complainant had filed the complaint under Section 138 of the Act against the petitioner qua dishonour of cheque dated 1.7.2000 in the sum of ₹ 4,15,000/-. The case of the complainant was that the complainant firm had sold bus bearing No. PB-09-C-1973 to M/s Sandhu Roadways Private Limited through the petitioner. In this regard, ₹ 2,00,000/- were paid by the accused in cash whereas qua the remaining sale consideration, cheque in question had been issued in favour of the complainant. When the said cheque was presented for encashment, the same was dishonoured by the bank with the remarks 'insufficient funds'. Despite issuance of notice to the accused, they had failed to pay the amount in question to the complainant.

Admittedly, the cheque in question dated 1.7.2000 was issued by the petitioner in favour of the complainant in the sum of ₹ 4,15,000/- towards part payment of the sale consideration qua the bus sold by the complainant to M/s Sandhu Roadways Private Limited. The bus in question was hypothecated with TELCO, Ludhiana branch. DW-2 Lakshinder Parshad deposed that on 5.2.1999, an agreement was executed between complainant M/s Kalgidhar Transport Company Regd. and TELCO. The complainant

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had committed default in making the payment of installments. ₹ 3,86,718/- were outstanding against the complainant. The concerned police officer was also informed vide letter dated 29.11.2000 that the bus in question had been taken in possession by TELCO. As per the agreement, the complainant could not sell the bus to any other person without clearing the loan taken from TELCO.

Thus, in the present case, the complainant had taken loan from TELCO with regard to the bus in question. The complainant had further sold the bus to M/s Sandhu Roadways Private Limited. On account of default in repayment of loan by the complainant to TELCO, the bus in question was taken in possession by TELCO on 29.11.2000. The cheque in question is dated 1.7.2000 but was presented for encashment on 23.12.2000 after the bus in question had been taken in possession by TELCO. Complainant had also filed a civil suit qua recovery of the cheque amount in question. A perusal of Annexure-A reveals that vide judgment/decree dated 19.5.2007, the said suit was dismissed by the Civil Court. Learned counsel for the petitioner, during the course of arguments, has submitted that the judgment/decree passed by the Civil Court had become final. In view of the above factual background, it cannot be said that the cheque in question had been issued by the petitioner for discharge of an existing legally enforceable liability. Hence, the Courts below had erred in ordering the conviction of the petitioner qua commission of offence punishable under Section 138 of the Act.

Accordingly, this petition is allowed. Impugned judgments/order passed by the Courts below, are set aside.

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Consequently, petitioner is ordered to be acquitted.

(SABINA)
JUDGE

August 12, 2015
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