IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev.No.1303 of 2015 (O&M)

Date of decision : 20.4.2015

Dilbag Singh

....Petitioner

Versus

Ram Sarup and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr.Tarunveer Vashist, Advocate
for the petitioner.

.....

MAHESH GROVER, J.

The petitioner impugns the judgments/orders of the learned trial court dated 29.4.2014 and that of the appellate court dated 20.3.2015 by which he has been convicted under the provisions of Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') and sentenced to undergo rigorous imprisonment for a period of one year and six months and to pay compensation equivalent to the cheque amount i.e. Rs.7,45,000/-.

The complainant initiated a complaint alleging advancement of a loan of Rs.7,45,000/- to the petitioner who was running an electronic goods shop, to satisfy which, the petitioner submitted three cheques dated 7.3.2013 for a sum of Rs.1 lakh, dated 11.3.2013 for a sum ofRs.5 lakhs and dated 11.3.2013 for a sum of Rs.1,45,000/- drawn on ICICI Bank Limited, Patiala. All the cheques on presentation were dishonoured by the bank with the remarks 'account closed'.

The petitioner disputed the transaction and pleaded that the cheques were stolen. In his statement under Section 313 Cr.P.C. he denied the incriminating material in totality with a qualification that the cheques were stolen by the complainant. He also pleaded that the cheques were forged and fabricated.

The learned trial court as also the appellate court on appraisal of the material convicted and sentenced the petitioner as above and also ordered compensation equivalent to the cheque amount i.e. Rs.7,45,000/- which is now the cause of grievance to the petitioner.

It is contended by the learned counsel for the petitioner that the respondents failed to discharge the onus of showing sufficient amount with them at the time of advancement of loan. He further pleaded that the cheques were forged after they were stolen from his house. Apart from this, it has been contended that the legal notice served upon the petitioner was defective and in fact not served upon him.

On due consideration of the matter and upon perusal of the impugned judgments, I do not find any reason to interfere with the same. Primarily the scope of revision is limited to the extent of illegalities or infirmities committed by a court while answering the controversy. The plea of the petitioner that the cheques were stolen and forged thereafter do not merit any consideration for the reason that no evidence was led by the petitioner in this regard. The provisions of Section 139 of the Act, which are extracted here below, would warrant a presumption against the petitioner and it was for him to discharge such an onus but apart from taking a plea he has failed to substantiate it.

> "**139. Presumption in favour of holder**.-- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

The plea of legal notice being defective, or not served upon the petitioner has been rightly discarded by the learned appellate court by relying upon a judgment of the Hon'ble Supreme Court in ***C.C.Alavi Haji v. Palapetty Muhammed and another*** **2007(3) RCR (Criminal) 185 (SC)**. The petitioner thus had an option to pay the amount or settle the issue with the complainant. After having failed to do so and also having failed in his obligation to discharge the presumption under Section 139 of the Act, I am of the view that no interference is warranted with the impugned judgments.

Learned counsel for the petitioner has placed reliance on ***Krishna Janardhan Bhat v. Dattatraya G.Hegde*** **2008(5) BCR 470,** ***John K.Abraham v. Simon C.Abraham and Another*** **2014 (1)RCR (Criminal) 267 and** ***K.Prakashan v. P.K.Surenderran*** **2007(4) Civil Court Cases 713 (S.C.)** in support of his contention that the respondents failed to discharge the onus of showing sufficient amount with them at the time of advancement of loan. There would be no quarrel with the proposition if such a question or issue had been raised before the trial court. I have gone through the cross-examination of the complainant and not a single question has been addressed to the complainant in this regard. Such issues are matters of evidence and need to be addressed at the earliest. The ratio of the judgments in the absence of any clear facts in this regard would be of no consequence to the petitioner.

Petition dismissed.

20.4.2015 (MAHESH GROVER)
dss JUDGE