In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.3259 of 2014 (O&M)

.....

Date of decision:22.1.2015

Mohinder Singh

...Petitioner

v.

Tarsem Singh and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.D. Rattewal, Advocate for the petitioner.

Mr. M.S. Dhami, Advocate for respondent No.1.

Mr. Varun Sharma, Assistant Advocate General, Punjab for the respondent No.2-State.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned order dated 26.8.2014 passed by learned Sessions Judge, S.B.S. Nagar.

It is stated in the revision petition that vide impugned judgment and order dated 27.9.2013 passed by the learned Sub Divisional Judicial Magistrate, Balachaur, the petitioner has been convicted and sentenced to undergo rigorous imprisonment for one year for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act'). The learned Sessions Judge, S.B.S. Nagar,

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vide impugned judgment dated 26.8.2014 dismissed the appeal upholding the conviction and sentence awarded to the petitioner. It is stated that the impugned judgments passed by the Courts below are patently and manifestly illegal, erroneous and perverse being against the settled law.

Notice of motion has been issued in this case.

Mr. M.S. Dhami, learned Advocate has appeared on behalf of respondent No.1 and Mr. Varun Sharma, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and contested this petition.

I have heard learned counsel for the petitioner and learned counsel for respondent No.1 and learned Assistant Advocate General, Punjab appearing for the respondent-State and have gone through the record.

Annexure-P.1 is the complaint placed on the record, which was filed by Tarsem Singh against Mohinder Singh for the offence under Section 138 of the NI Act. As per this complaint accused owed ₹2.50 Lacs to the complainant and while acknowledging his said legal liability towards the complainant and in order to discharge the same, the accused issued a cheque bearing No.002362 dated 6.8.2010 for ₹2.50 Lacs drawn on Punjab Gramin Bank, Branch Bhaddi, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar, out of his account being maintained by the accused with the said Bank in favour of the complainant, with the assurance that the cheque aforesaid would be duly honoured for payment as and when presented by the complainant. The complainant presented

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the said cheque to Punjab Gramin Bank, Branch Bhaddi for encashment, which was dishonoured and returned unpaid with the remarks "funds insufficient". Legal notice was given and on non-payment the complaint was filed.

From a perusal of the complaint as well as the impugned judgments passed by the Courts below, it is clear that there is no averment in the complaint to show when the loan was given by the complainant to the accused. There is no particular in the complaint in whose presence the loan amount was given and at which place. A perusal of the record also shows that there is no evidence on the record that what amount has been given as loan and whether any interest etc. was to be paid or not. There is also no document on the record to show the liability. There is also no document on the record to show the capacity of the complainant to lend such a huge amount. There is also no evidence on record that such a huge amount was withdrawn from the bank. Further, this loan amount is not paid through negotiable instrument. As per provisions of the Income-Tax Act, such a huge amount cannot be paid in cash. The version of the complainant is that he borrowed only ₹25,000/- from the complainant about four years back and his signatures were obtained on blank stamp papers. The accused/petitioner has also taken the defence that one Reaper was purchased by the complainant and that amount of ₹25,000/- was to be deducted from that amount.

The learned Sub Divisional Judicial Magistrate, Balachaur, convicted the revision petitioner only on the ground that the

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accused/petitioner has admitted the borrowing of ₹25,000/-. The lower Court has not properly appreciated the evidence on the record. In the absence of any evidence produced by the complainant or in the absence of any averment made in the complaint, the complainant has failed to prove the liability of the accused/petitioner regarding the cheque in question. It is for the complainant to show that the cheque was issued for legally enforceable debt. The presumption under Section 139 of the NI Act has been rebutted by the accused from the evidence of the complainant itself as there is nothing to show that any amount had been given by the complainant to the accused and there being no document showing that any amount was paid to the accused/petitioner and there being no particulars regarding loan amount, source of the amount, I find that a reasonable doubt exists in the prosecution case and the Courts below have ignored all these facts and convicted the accused/petitioner. The findings of the Courts below are not as per law and the same are liable to be set aside.

Finding merit in the criminal revision petition, the same is accepted. The petitioner is acquitted of the charges as framed against him.

He be released forthwith, in this case, if his custody is not required in connection with any other case.

January 22, 2015. **(Inderjit Singh)**
Judge

hsp

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