

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3553 of 2014 (O&M)
Date of decision: February 13, 2015

Dharminder Singh

...Petitioner

Versus

Ranjit Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bhrigu Dutt Sharma, Advocate
for the petitioner.

Mr.N.P.S.Mann, Advocate
for respondent No.1.

Mr.A.S.Klar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this revision petition under Section 401 Cr.P.C. against State of Punjab and other respondents challenging the judgment dated 04.10.2014 passed by learned Addl. Sessions Judge, Hoshiarpur, vide which the appeal against the judgment of conviction and order of sentence dated 17.04.2012 passed by learned Sub Divisional Judicial Magistrate, Garhshankar sentencing the petitioner to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5,000/-, has been dismissed.

It is mainly stated in the grounds of revision that both the Courts below have erred while convicting and sentencing the

petitioner. The case of the complainant is that petitioner issued cheque No.0524577 dated 01.06.2009 for an amount of ₹4 lacs from his bank account with Oriental Bank of Commerce, Balachaur in order to discharge his liability but the said cheque, on presentation, was dishonoured by the Bank vide memo dated 08.08.2009 with the remarks 'Insufficient Funds' and in spite of serving a legal notice, the petitioner did not make the payment.

It is stated in the grounds of revision that both the Courts below have failed to consider that the complainant Ranjit Singh is the real maternal uncle of the petitioner. The mother of the petitioner had died when the petitioner was just 5-6 years old and father of the petitioner had re-married and since then, the petitioner had been living with the complainant-respondent till his marriage. It is further stated that both the Courts below have failed to consider that the petitioner while living with the complainant, used to look after day-to-day work of the complainant and his brother-in-law Jaswant Cheera who was living abroad. The complainant had failed to prove that he was having capacity to pay a huge amount of ₹4 lacs to the petitioner. The complainant also failed to show that amount of ₹4 lacs was actually payable to the petitioner.

Notice of motion was issued in this case and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petition.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties as well as

learned Stated counsel and have gone through the lower Court record.

From the record, I find that case of the complainant is that accused owe an amount of ₹4 lacs towards the complainant and in order to discharge his liability, accused issued cheque dated 01.06.2009. The perusal of the complaint shows that no particulars have been mentioned in the complaint as to on which date, in which month and year, the said loan has been given. There is nothing that in whose presence and where the loan has been given. There is no documentary evidence to show that loan has been given through negotiable instruments. The loan of ₹4 lacs cannot be given in cash as per the income tax provisions. There is nothing on the record to show that any document was executed at the time of lending the amount of ₹4 lacs. There is no receipt, pronote, agreement on the record. There is also nothing in the complaint to prove the capacity of the complainant to pay such a huge amount in cash. There is no bank statement/detail produced on the record to show that this amount has been given by withdrawing from the bank. All these facts show that the complainant failed to prove the liability of the accused to pay the legal enforceable debt. The presumption under Section 139 of the Negotiable Instruments Act has been rebutted from the evidence of the complainant himself.

At the time of arguments, it is admitted that the petitioner is nephew of the complainant and complainant is real maternal uncle of the petitioner. In the statement before the Court, the complainant

admitted that after the death of mother of present petitioner and his father being re-married, the petitioner was looked after and maintained by the complainant Ranjit Singh. It is admitted that after the marriage, the petitioner is residing at Mohali. The complainant stated in cross-examination that petitioner Dharminster Singh on 28.05.2009, taken ₹4 lacs from him for doing work and he agreed to return the same after 15-20 days. Even if, this version is presumed to be correct, then it is improbable version because maternal uncle of the petitioner knowing fully well regarding the financial capacity of the petitioner has lent out ₹4 lacs for starting the work by the petitioner and how the petitioner will be able to give the cheque for repayment of that amount just after two days, as the cheque is dated 01.06.2009. The perusal of the cross-examination of the complainant also shows that on so many facts, he is showing ignorance and saying that he did not remember, which also creates doubt in his version.

Keeping in view the evidence produced on record by the complainant, I find that complainant failed to prove that the cheque was issued by the accused for discharge of legally enforceable debt. The complainant has failed to prove that any amount has been given to the present petitioner. He has also failed to prove the particulars as to when the loan was given. He has also failed to show his capacity to lend the loan. No document has been produced in support of the complainant's case.

In view of the above, I find that the findings of Courts below are not as per evidence and against the law and Courts below

have misread the material evidence. The judgment of conviction and order of sentence dated 17.04.2012 passed by learned Sub Divisional Judicial Magistrate, Garhshankar and judgment dated 04.10.2014 passed by learned Addl. Sessions Judge, Hoshiarpur are set aside.

Therefore, finding merit in the present revision petition, the same is allowed. Petitioner Dharminder Singh is acquitted of the charges framed against him and he be set at liberty forthwith, if his custody is not required in connection with any other case.

February 13, 2015
Vgulati

(INDERJIT SINGH)
JUDGE