

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3595 of 2014 (O&M)
Date of Decision: January 13, 2015

Jaspal Singh and another

...Petitioners

VERSUS

M/s Kumar Finance Co. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjiv Gupta, Advocate
 for the petitioners.

Mr.Aman Pal, Advocate
 for respondent No.1.

Mr.S.S.Pannu, Deputy Advocate General, Haryana
 for the respondent-State.

INDERJIT SINGH, J.

Petitioners have filed this revision petition under Section 401 Cr.P.C. against M/s Kumar Finance Company and State of Haryana respondents challenging the impugned judgment dated 30.10.2014 passed by learned Addl. Sessions Judge, Kurukshetra and impugned judgment of conviction dated 04.05.2011 and order of sentence dated 05.05.2011 passed by learned Judicial Magistrate Ist Class, Kurukshetra.

It is mainly stated in the petition that impugned judgment of conviction dated 04.05.2011 and order of sentence dated 05.05.2011 passed by learned Judicial Magistrate Ist Class, Kurukshetra and impugned judgment dated 30.10.2014 passed by learned Addl. Sessions Judge, Kurukshetra upholding the above-said judgment of conviction and order of sentence, are against the law and facts proved

on the file. The findings are the result of manifest illegalities and irregularities and as such, impugned judgments are liable to be set aside.

The brief facts as stated in the petition are that in fact cheque Ex.P3 bears different writings from different inks which itself proves the falsity of the cheque in question. In fact, it was a simple Hire Purchase Agreement and facts have been distorted. In fact, as per Ex.P11, P13 and P15, it was established that signatures were obtained on blank papers which were mis-appropriated by the complainant. It is further stated in the petition that both the Courts below failed to appreciate that once the provisions of Section 138 of the Negotiable Instruments Act have been put in picture, then offence under Section 420 IPC is not attracted. Both the offences cannot go simultaneously. The present case is a case in which the dishonour of cheque attracts the penal consequences of Section 138 of the Negotiable Instruments Act, as such, provisions of Section 420 IPC in itself have no applicability.

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

The brief facts of the case are that M/s Kumar Finance Company has filed a complaint against Brij Raj and Jaspal Singh under Sections 420, 467, 468, 471, 504 and 506 IPC and Section 138 of the Negotiable Instruments Act. It is mainly stated in the complaint that on 24.10.2000, both the accused-petitioners came to the

business premises of complainant and induced that accused No.1 Brij Raj has Bank account No.11278 in Punjab National Bank, Pipli and a loan of ₹50,000/- may be granted to accused No.2 Jaspal Singh at his (Brij Raj) security/guarantee by way of post dated cheque from his account. Then Brij Raj took out the cheque book and induced complainant to grant a loan against post dated cheque to accused No.2. They also agreed that in case of failure, complainant would be at liberty to withdraw the outstanding amount from the account of accused No.1 through the said cheque. ₹50,000/- was granted as a loan to accused No.2 Jaspal Singh. It is the case that both the accused had dishonest intentions to cheat the complainant and in furtherance of their dishonest intentions, accused No.1 Brij Raj issued a post dated cheque for ₹68,000/- and signed other papers of loan as a guarantor for a loan to be granted to accused No.2 Jaspal Singh and accused No.2 also signed the loan papers as debtor. When the cheque was presented in the Bank, it was returned unpaid with the remarks 'signatures differs'. The complainant received information regarding bouncing of cheque through Akash Ganga courier and then made enquiries and came to know that accused had cheated him by issuing a forged cheque from the account of accused No.2 by accused No.1.

Learned JMIC, Kurukshetra convicted and sentenced both the accused under Section 420 IPC. Appeals were filed by both the accused and same were also dismissed vide impugned judgment dated 30.10.2014. Aggrieved from the above-said impugned

judgments, present revision petition has been filed.

Lower Court record was summoned in this case.

After hearing learned counsel for the parties as well as learned State counsel and after going through the evidence on record, first of all, I find that the allegation mainly constituting the offence under Section 420 IPC is that cheque was signed by accused Brij Raj, who stood guarantor for Jaspal Singh and the cheque was from the account of Jaspal Singh. It is the case of the complainant that it has been intentionally done to commit fraud. The findings of both the Courts below are perverse and against the evidence. There is no cogent evidence on the record to show that the cheque was signed by Brij Raj petitioner No.2. No expert has been examined to prove this fact. Otherwise also, the Bank has returned the cheque with the remarks that 'signatures differs' which rather creates doubt in the prosecution version and supports the defence version that at the time of advancing loan, blank cheques were taken and signatures on so many documents have been obtained. The blank cheque of Jaspal Singh was used by forging signatures of Brij Raj to make offence under Section 420 IPC. When the Bank itself saying that signatures differs and there is statement of Brij Raj that he has not signed the cheque, therefore, the opinion of the Bank supports the version of revision petitioners. In these circumstances, it was necessary for the complainant to get signatures examined from a handwriting expert. But there is no such evidence on the record. Only on this ground, the present revision petitioners are liable to be acquitted.

Further, I find that it is admitted case of the complainant that he has taken security documents got executed from Jaspal Singh including agreement of guarantee from Brij Raj, which means that if there would have been intention of present petitioners to cheat, even then, they could not cheat because they have given security documents. Further, I have seen the documents in the lower Court record. The perusal of so many documents including agreement of guarantee etc. shows that the signatures of Brij Raj and Jaspal Singh looks to be obtained on blank papers and after that these documents have been got typed. The signatures on these documents do not look that these have been appended after the scribing of the documents. This fact, on the face of it, further creates doubt in the prosecution version and supports the defence version.

Keeping in view the above discussion, I find that the judgments and order passed by learned Courts below are perverse and not as per evidence and the material evidence has been misread by the Courts below. Therefore, the judgment of conviction dated 04.05.2011 and order of sentence dated 05.05.2011 passed by learned JMIC, Kurukshetra and judgment dated 30.10.2014 passed by learned Addl. Sessions Judge, Kurukshetra are set aside.

Resultantly, the revision petition is accepted. Let, petitioners Jaspal Singh and Brij Raj be set at liberty forthwith, if their custody is not required in connection with any other case.

January 13, 2015
Vgulati

(INDERJIT SINGH)
JUDGE