IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-A-564 MA-2012(O&M)
Date of decision: 27.04.2016

Dharambir Singh and others
…..Applicants

versus

Smt.Anju
……Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.N.S.Shekhawat, Advocate for the applicants/appellants
Mr.A.P.S.Deol, Senior Advocate with
Mr.Samrat Malik, Advocate for the respondent

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?

<u>Kuldip Singh, J.</u>

Legal heirs of Bhoop Singh complainant have filed this application for grant of leave to appeal against the judgment dated 15.5.2010, passed by the learned Judicial Magistrate 1st Class, Gurgaon whereby the complaint filed by the complainant under Section 138 Negotiable Instruments Act, 1881 was dismissed and accused was acquitted of the charges framed against her.

As per version of the complainant, as given in the complaint, he agreed to sell agricultural land measuring 124 kanals bearing khewat / khatoni No.169/187 situated in the revenue estate of village Dhorka, Tehsil and District Gurgaon, as per the jamabandi for the year 2003-2004 to the accused for the total sale consideration of Rs.31 crores. As the complainant was having faith in the accused, therefore, he executed registered sale deed bearing Vasika No.1069 dated 28.07.2008. For the sale consideration the accused issued five cheques worth Rs.5.58 crores each, detailed as under:-

Sr.No.	***Cheque No.***	***Amount/Rs.***	***Date***	***Drawn on***
1	*850246*	*5.58 crores*	*27.1.09*	*Karnatka Bank Ltd., Sector, Gurgaon*
2	*850247*	*5.58 crores*	*27.1.09*	*-do-*
3	*850248*	*5.58 crores*	*27.1.09*	*-do-*
4	*850249*	*5.58 crores*	*27.1.09*	*-do-*
5	*850250*	*5.58 crores*	*27.1.09*	*-do-*

The cheques were presented to the drawee Syndicate Bank, Branch Wazirpur. However, the same were returned with the remarks "payment stopped by the drawer". After issuing the statutory notice, the complaint was filed.

After recording the preliminary evidence, accused was summoned and notice of accusation was served upon her to which she pleaded not guilty.

Thereafter, the complainant examined Shri V.S.D.R.G. Maheshwar, Assistant Branch Manager, Karnataka Bank Ltd. (PW1). The complainant himself entered the witness box as PW2 and closed the evidence.

When examined under Section 313 Cr.P.C., the accused denied the evidence led against her as incorrect and took the plea that in view of the settlement dated 16.10.2008 the complainant was to return the cheques to her as 28% of the built area was to be given to the complainant by her in lieu thereof, as per the sale deed. She further took the plea that there was no legal debt or liability pending against her regarding the said cheques. She further took the plea that one compromise was arrived at between her and the complainant. In view of that compromise dated 13.8.2008 the money which was paid by her to the complainant was returned by the complainant. Later on another compromise was effected between the complainant and the accused on 16.10.2008. As per the said compromise, she again paid Rs.3 crore 10 lacs to the complainant by cash and cheque, which was acknowledged by the complainant and it was agreed that complainant was entitled to 28% of the developed area and that he will return all the post dated cheques to her. The complainant also filed a civil suit against her and it was observed by the Court that the complainant is entitled to 28% of the suit property. The complainant has filed the complaint after concealment of material facts.

In defence, accused examined Satish Kumar, Civil Ahlmad (DW1) and ASI Jitender Pal (DW2) and closed the defence evidence, after producing some documents.

It comes out that during pendency of the present application, respondent has offered to pay the entire cheque amount of Rs.27 crore 90 lacs. In fact, the demand drafts were also brought before this Court and photocopies thereof were taken on file. The respondent had also requested that after receiving the money, the possession of land which is with the applicants, be handed over to her. However, this offer was apparently not acceptable to counsel for the applicants, who cited the enormous increase in the price of the land, indicating that they are not willing to hand over the possession of land in question to the respondent. Civil litigation is also pending between the parties regarding the said agreement of sale and possession. Therefore, this Court proceeds to decide the controversy on merits.

I have heard learned counsel for the parties and have also carefully gone through the file.

In order to prove the offence under Section 138 of Negotiable Instruments Act, 1881, the complainant is required to prove the legal debt or liability. The cheques are stated to have been issued as a part of the sale consideration of the land measuring 124 kanals sold by the complainant to the accused. The copy of the undisputed sale deed is Ex.C1. The perusal of the sale deed shows that 124 kanals land was sold on 28.7.2008 for Rs.31 crores. The details of payment mentioned in the sale deed are reproduced as under:-

	Amount/Rs.	***Cheque No.***	***dated***	***Drawn on***
1	*1,05,00,000*	*850244*	*28.7.2008*	*Karnatka Bank Limited, Sector 14, Gurgaon*
2	*1,55,00,000*	*850245*	*28.7.2008*	*-do-*
3	*5,58,00,000*	*Post dated 850246*	*27.1.2009*	*-do-*
4	*5,58,00,000*	*Post dated 850247*	*27.1.2009*	*-do-*
5	*5,58,00,000*	*Post dated 850247*	*27.1.2009*	*-do-*
6	*5,58,00,000*	*Post dated 850247*	*27.1.2009*	*-do-*
7	*5,58,00,000*	*Post dated 850250*	*27.1.2009*	*-do-*

It was further stated that Rs.50 lacs has been paid in advance in cash and that now nothing is due. In this way, Rs.2 crore

60 lacs were paid on the date of sale deed and Rs.50 lacs were paid earlier and total sale consideration as stood paid at the time of execution of the sale deed comes to Rs.3 crore 10 lacs. The perusal of the sale deed further shows that it was also stipulated in the sale deed (in Hindi), true translation of which is as under:-

> *"If the said post dated cheques issued by the purchasers were not encashed in time then without any Court proceedings, the sale deed shall deem to be cancelled and no Court proceedings will be required."*

It was further stipulated as under:-

> *"If the seller himself does not get the cheques encashed then it is agreed that 28% developed share shall be given to the seller."*

In this way, it becomes clear that the post dated cheques were for Rs.27.90 crores, which were to be encashed on or after 27.1.2009, whereas the date of sale deed is 28.7.2008. This is unusual condition. Apparently, there was some other understanding between the parties that is why post dated cheques, to be encahsed after six months, to the tune of Rs.27 crores 90 lacs were given. The stipulation in the sale deed itself shows that if the post dated cheques are not encashed in time then without the intervention of the Court, the sale deed shall be deemed to be cancelled and no order of the Court will be required. Therefore, in case the said cheques are not encashed, then in terms of the conditions of sale deed, sale deed will be deemed to be cancelled. In this way, from the sale deed itself no legally enforceable debt or liability is made out for post dated cheques, as in case of dishonouring of the cheques, the land was agreed to be reverted to seller/ plaintiff.

Further, when the two compromises between the parties are examined, it would further show that there is no legally enforceable debt or liability under Section 138 of Negotiable Instruments Act, 1881. After the sale deed on 27.8.2008, two compromises were entered between the parties, first is dated 16.8.2008 (Ex.DB) and second is dated 13.8.2009 (Ex.DA). Perusal of the compromises, which bears signatures of the complainant as well as accused, goes to show that after the execution of the sale deed on 28.7.2008, parties arrived at settlement on 16.8.2008 i.e. before the date of the post dated cheques i.e. 27.1.2009, wherein it is mentioned that later on the parties have come to know that a dispute regarding the land sold by the Bhoop Singh is pending, on account of which Bhoop Singh has returned the sum of Rs.3 crores 10 lacs. It is mentioned that as per the compromise regarding the sale deed dated 28.7.2008, the amount of Rs.3 crores 10 lacs was returned, by way of Rs.50 lacs as cash and Rs.2 crore and Rs.60 lacs through cheque No.386361 dated 15.10.2008. It was further agreed that the land was purchased for development of IT Park for Commercial purposes and Collaboration agreement between third party is entered with the consent of Bhoop Singh complainant and that 28% of the developed area after development will be given to Bhoop Singh. It was further stipulated that post dated cheques worth Rs.27 crores 90 lacs mentioned in the sale deed and Rs.1 crore 50 lacs shall be returned by Bhoop Singh, out of which Rs.3 crore 10 lacs have been returned today and Rs.1 crore 5 lacs shall be returned after development of IT Park. Parties had agreed that regarding the sale deed dated 28.7.2008, regarding which cancellation proceedings were initiated, shall stand as such. Bhoop Singh agreed that after the IT Park is passed by the Government, he will hand over the possession of the sold land to Smt.Anju, buyer. In this way, before the date of maturity of the post dated cheques dated 27.1.2009, it was agreed between the parties that the said cheques will be returned. Therefore, if after the said agreement, the cheques were presented to the bank and the same were returned with the remarks of payment stopped, it cannot be said that the cheques meant were for discharge of legal debt or liability. Then there is further compromise (Ex.DA) dated 13.8.2009 between the parties, in which, while referring to the sale deed for 124 kanals for Rs.31 crores, reference has been made to the complaint made by the seller with the police, in which it was agreed that Rs.3 crore 10 lacs, received by the seller, shall be returned to the purchaser. Then there is a mention of issuance of DD No.423317 dated 9.8.2008 for Rs.2 crore 60 lacs and DD No.122341 dated 9.8.2008 for Rs.50 lacs which have been received by the purchaser.

In this way, it is clear that vide agreement (Ex.DB), the post dated cheques for Rs.27 crore 90 lacs were to be returned by the complainant to the accused, which apparently he did not return. It further comes out that there was a mention in the sale deed that in case cheques are not encashed by the seller, he shall be entitled to 28% of the developed land. The same also finds mention in the agreement (Ex.DB), which shows that in lieu of the post dated cheques, complainant agreed to 28% of the developed land and after IT Park is approved by the Government, the complainant shall hand over the possession of the land to the accused, indicating that even possession of the land was not handed over to the accused, at time of sale. Terms of the sale deed produced itself shows that there were some other dealing for which five post dated cheques mentioned in the present complaint worth Rs.27 crores 90 lacs were issued which were payable after six months. However, before the date of the said post dated cheqeus, further compromise took place, as discussed above.

Further, copy of the order Ex.DD shows that one M/s Manglam Multiplex Private Limited had filed a suit on 28.4.2007 against Bhoop Singh and others for declaration and permanent injunction. Meaning thereby that at the time of sale, land was subject matter of litigation. A copy of the plaint is Ex.DH. It is also not disputed that regarding the said dispute, complaints and counter-complaints were filed before police. Copy of the plaint (Ex.D1/A) shows that Bhoop Singh also filed a civil suit in the Court of Civil Judge, Senior Division, Gurgaon for declaration and permanent injunction praying that the sale deed is deemed to have been automatically cancelled in view of the terms and conditions of the sale deed and that the complainant is still owner in possession of the suit property.

Therefore, in view of the terms of the sale deed and subsequent compromise, as discussed above, I am of the view that the post dated cheques, issued at the time of sale deed, were not for discharge of legal debt or liability. As such, offence under Section 138 of Negotiable Instruments Act, 1881 is not made out. It comes out that from the evidence, discussed above, only one view was possible, which was taken by the learned Magistrate.

Therefore, I am of the view that there is no illegality, infirmity or perversity in the judgment passed by the learned Magistrate. Accordingly, the present application under Section 378(4) Cr.P.C. for grant of leave to appeal being devoid of any merit is dismissed.

27.04.2016 **(Kuldip Singh)**
gk **Judge**