IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.1208 of 2013 (O&M)
Date of decision: 04.04.2016

Ras Bihari Chaudhary

…..Petitioner

versus

Satyaveer

……Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.S.K.Tripathi, Advocate for the petitioner

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?

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 19.12.2012, passed by the learned Sessions Judge, Gurgaon, vide which judgment of conviction dated 29.8.2012 and order of sentence dated 30.8.2012, passed by learned Judicial Magistrate 1st Class, Gurgaon, convicting and sentencing the petitioner under section 138 Negotiable Instruments Act, 1881 was set aside and the accused was acquitted of the notice served upon him.

According to the complainant, he had advanced a loan of Rs.2 lacs to the accused. In lieu of the loan, the accused issued a cheque No.440507 dated 7.11.2006 for Rs.two lacs drawn at Bank of India, Tilak Nagar Branch, New Delhi. The said cheque, when presented, was dishonoured with the remarks 'funds insufficient'.

The learned Magistrate held that the offence is proved. Therefore, the accused was sentenced to pay a compensation of Rs.2,30,000/- or to undergo Simple Imprisonment for a period of six months for the commission of offence punishable under Section 138 Negotiable Instruments Act, 1881.

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

The perusal of the judgment of learned Sessions Judge shows that the learned Sessions Judge has held that the legally enforceable debt is not proved. Date, month and year of loan was not mentioned in the complaint, though in the statement, the complainant tried to explain the same by saying that same was given on 28.6.2008. The complainant had further stated that the accused is illiterate and he himself filled in the cheque, whereas the first appellate Court has held that the accused only signed the cheque and it was filled in by somebody else. Complainant stated that he was not having requisite funds with him and he borrowed Rs.45,000/- from his son and paid Rs.1,60,000/- from his pocket. Complainant is not even income tax assessee and source of money is not explained.

During arguments, it comes out that accused is a sweeper by profession, whereas the complainant is living in different locality i.e. Sahib Kunj, New Palam Vihar Gurgaon. Therefore, the close relationship so as to advance the loan without any writing also creates doubt about the story of the complainant. Though the accused is living in Harijan Colony, Gurgaon but the cheque was drawn on Bank of India, Tilak Nagar Branch, New Delhi, which is far away from

Gurgaon.

Learned counsel for the petitioner contends that the learned lower appellate Court has held that the accused was a member of the Committee organized by one Bachhu Singh. However, said Bachhu Singh was not examined. Even if this fact is ignored the other reasoning given by the first appellate Court is sufficient to support its judgment.

The learned Sessions Judge has taken one of the two possible views. Findings recorded by the learned Sessions Judge cannot be called illegal or perverse. Therefore, there is no ground to interfere in the judgment of acquittal.

Resultantly, the present revision stands dismissed.

04.04.2016 **(Kuldip Singh)**
gk **Judge**