

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No.1266 of 2014 (O&M)

Date of decision : 22.09.2016

M/s Ashwani Enterprises

...Petitioner

Versus

M/s Sagarika Enterprises

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None for the petitioner (s).

Mr. D.S. Kahlon, Advocate
for the respondent.

JITENDRA CHAUHAN, J. (Oral)

The present revision petition has been filed by the petitioner for setting aside the judgment dated 06.03.2014, passed by learned Sessions Judge, Pathankot (for short 'First Appellate Court'), whereby the judgment of conviction and order of sentence dated 21.10.2011, passed by learned Sub Divisional Judicial Magistrate, Pathankot (for short 'trial Court'), were upheld.

There was no representation on behalf of the petitioner.

As per the averments made in the petition the cheque, Ex.C2, was issued in favour of M/s Sagarika Enterprises and complainant, Arun Plaha has filed the present complaint through his attorney CW1-Shammi

Kant. The cross-examination of CW1 reveals that he is not well conversant with the facts and circumstances of the instant case. Complainant has failed to produce the bills bearing Nos.105, 107 & 108 vide which he supplied items to the petitioner and total of these bills does not tally with the cheque amount. The cheque in question was given as security, when it was blank and against the purchase of batteries from the complainant.

On the other hand, the learned counsel for the respondent states that the petitioner has never surrendered before learned First Appellate Court after his conviction was upheld.

I have heard the learned counsel for the respondent and carefully perused the entire file.

Though, it is an admitted fact that the petitioner has issued alleged cheque, however, as per the version of the petitioner same was issued as security in order to purchase the material on credit. In the instant case, the petitioner has failed to lead any cogent and convincing evidence which suggests that the cheque in question was given as security and that he has already made the payment against the said bills i.e. Bill Nos.105, 107 & 108. Further, the petitioner has not surrendered after his conviction was upheld by learned First Appellate Court. Report of learned Chief Judicial Magistrate, Pathankot, be read as under:-

“In reference to the case as mentioned on the subject cited above, I have honour to submit that the re-arrest warrants of convict Ashwani Kumar was issued received back un-executed. Therefore, the Court is satisfied that the convict could not be served through

ordinary process. The proclamation was ordered to be issued. The proclamation of convict Ashwani Kumar was received back executed and the serving Constable HC Rajinder Kumar proved the proclamation and his report. His statement was separately recorded. The case was adjourned to 03.03.2016 for awaiting appearance of the convict.”

In these circumstances, this Court does not find any ground to interfere with the impugned judgment, in exercise of its revisional jurisdiction, as no material evidence or any circumstance has come on record to establish that there is any defect of procedure or improper acceptance or rejection of evidence by the Court(s) below and that the impugned judgment would cause miscarriage of justice. This Court feels that the impugned order has been passed after proper appreciation of facts on record and application of judicial mind.

Consequently, the present revision petition fails and is hereby dismissed.

22.09.2016

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No