

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.1336 of 2015 (O&M)

Date of Decision: 23.09.2016

Rupinder Singh

...Petitioner(s)

Versus

Sneh Lata

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Kashish Garg, Advocate
for the petitioner.

Mr. Sherry K. Singla, Advocate
for the complainant.

HARI PAL VERMA J.

CRM-12184-2015:

For the reasons stated in the application, which is supported by an affidavit of the petitioner, the same is allowed and delay of 6 days in filing the present revision petition is condoned.

Main case:

Petitioner-complainant Rupinder Singh has filed the present revision petition against judgment dated 29.11.2014 passed by learned Additional Sessions Judge (Fast Track Court), Bathinda, whereby the respondent-accused has been acquitted of offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act").

Briefly stated, petitioner-complainant has filed a complaint against the respondent-accused under Section 138 of the Act. As per the complaint, the respondent agreed to sell her building bearing M.C. No.5687 measuring 150 Sq. Yards situated at Mohalla Talian Wala, Bathinda vide agreement to sell dated 25.5.2005 for a consideration of Rs.6,00,000/- and received earnest money of Rs.3,50,000/-. The balance of the sale price was to be paid at the time of execution of the sale deed i.e. on or before 30.7.2005. However, on 29.7.2005, the respondent-accused approached the petitioner-complainant and showed her inability to execute the sale deed and requested for extension of the period of execution of the sale deed. Accordingly, time was extended and an endorsement at the back of the agreement to sell dated 25.5.2005 was made, extending the time for execution of sale deed on or before 12.9.2005. On 12.9.2005, the respondent again showed her inability to execute the sale deed and sought further extension of time. Again, the time was extended for execution of sale deed on or before 18.10.2005. However, on 18.10.2005, the petitioner-complainant waited for the respondent-accused at the office of Sub Registrar, Bathinda from 9-00 A.M. to 5-00 P.M. along with balance sale consideration as well as expenses of sale deed to get the sale deed executed in his favour, but the respondent-accused failed to turn up and honour her part of the agreement to sell dated 25.5.2005, despite availing extensions on 29.7.2005 and 12.9.2005. The petitioner marked his presence in the office of Sub Registrar, Bathinda. Thereafter, the complainant got a registered/A.D. Legal Notice issued to the respondent on 29.11.2005, but the respondent showed her inability to execute the sale deed, saying that

she is a Government employee and the house property in question is already under mortgage with SBOP Paras Ram Nagar and SBOP Branch SSI Industry Centre, Bathinda and as such, she is unable to either hand over the actual possession of the house in question or to transfer the unencumbered property in question to the petitioner and accordingly, she issued two post-dated cheques of Rs.3,50,000/- each to the petitioner i.e. cheque bearing No.043955 dated 6.12.2005 towards earnest money and cheque bearing No.043956 dated 12.12.2005 towards compensation, drawn on Central Bank of India, for resiling from the agreement to sell dated 25.5.2005. However, when the said cheques were presented at Centurion Bank of Punjab, for collection, the same were returned by the bank with memo. dated 7.12.2005 and 13.12.2005 with the remarks "Funds Insufficient". Accordingly, the complainant got a Legal Notice served upon the respondent followed by the present complaint.

In preliminary evidence, the petitioner-complainant tendered copy of agreement to sell along with fresh writing Ex.C1/A, copy of writing dated 12.9.2005 Ex.C1/B, copy of application moved by the complainant before Sub Registrar for marking his presence as Ex.C2 and Ex.C3, Legal Notice dated 29.11.2005 Ex.C4, original cheques Ex.C-6 and Ex.C-7, memos. Ex.C-8 and Ex.C-9, Legal Notice dated 22.12.05 Ex.C-10 and photocopy of postal receipt Ex.C-11 before the trial Court.

The petitioner-complainant himself stepped into the witness box as CW-1 and reiterated the allegations made in the complaint. He also examined CW-2 Surjit Singh Brar, Advocate and Sanjiv Kumar as CW-3.

Respondent-accused, when examined under Section 313 CrPC, she denied her liability to pay anything to the complainant.

The trial Court, vide judgment dated 10.9.2012, convicted the respondent for offence under Section 138 of the Act and vide separate order of even date, sentenced her to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- and in default, to undergo RI for one month more.

Aggrieved against judgment of conviction and order of sentence dated 10.9.2012 passed by the trial Court, the respondent-accused preferred an appeal. Even the petitioner-complainant also filed appeal, for enhancement of sentence as well as fine, to the extent of doubling the amount of both the cheques of Rs.3,50,000/- each i.e. to Rs.7,00,000/- each, to the complainant towards earnest money and damages.

Learned lower Appellate Court vide judgment dated 29.11.2014 accepted the appeal filed on behalf of the respondent-accused and acquitted her of the charges, holding that the judgment of conviction and order of sentence against the respondent-accused cannot be sustained and accordingly, set aside the order of conviction and sentenced. The appeal filed on behalf of the petitioner-complainant was dismissed as infructuous, holding that there is no scope for enhancement of sentence as the judgment of conviction and sentence has already been set aside.

Learned counsel for the petitioner has argued that the respondent-accused has agreed to sell her building vide agreement to sell dated 25.5.2005 and accepted the earnest money of Rs.3,50,000/-. The balance sale consideration was to be paid at the time of execution of the

sale deed i.e. on or before 30.7.2005. However, with the mutual understanding of the parties, the date of execution of sale deed was extended to 18.10.2005, on which date, the petitioner waited for the respondent in the office of Sub Registrar for execution of sale deed, but the respondent did not turn up. The petitioner got his presence recorded in the office of Sub Registrar, Bathinda. In order to discharge her liability, the respondent has given two post-dated cheques of Rs.3,50,000/- each to the petitioner towards payment of earnest money as well as payment of account of compensation. However, when the said cheques were presented before Cental Bank of India, the same were returned with the remarks "Funds insufficient". Thus, considering the fact that the respondent has issued cheques in favour of the petitioner on account of discharge of her liability, the petitioner being entitled for the said amount and the said cheques having been bounced on account of insufficient funds, the trial Court has rightly convicted the respondent for offence under Section 138 of the Act. However, learned lower Appellate Court has failed to appreciate the evidence on record, even though all the ingredients of Section 138 of the Act were completely fulfilled. Learned lower Appellate Court also failed to appreciate the fact that there was breach of contract on the part of the respondent and in lieu of such breach, two cheques were issued by the respondent. The observations of the learned lower Appellate Court that the cheques were not issued in discharge of any legally enforceable debt and the amount for which the said cheques were issued, were not legally recoverable, are erroneous. Therefore, the judgment passed by the trial Court to the extent of conviction needs to be upheld, though the sentence

and compensation are required to be enhanced and the judgment passed by the lower Appellate Court is required to be set aside.

In support of his case, learned counsel for the petitioner has placed reliance upon judgments of Bombay High Court in **Nitin v. Shri Vyankatesh Housing Agency Nagpur 2011(8) RCR (Criminal) 2944** and **Bapurao Moriram Mankar v. The State of Maharashtra 2010(2) Bom. CR (Cri) 330.**

On the other hand, learned counsel for the respondent has argued that on the basis of agreement to sell dated 25.5.2005, parties are litigating in Civil Court by filing a suit for specific performance of agreement to sell in question and the said suit has been decreed in favour of the petitioner, ordering recovery of Rs.5,74,096/- by way of attachment of salary, gratuity, GPF, pensionary benefits etc. of the judgment debtor, vide judgment and decree dated 27.2.2010. Learned counsel for the respondent has further argued that the agreement to sell in question was forged and fabricated one, which was got prepared by the petitioner in connivance with witnesses. Even the dates of execution of the agreement to sell were never extended. He submitted that on the basis of complaint filed by the petitioner, it is apparently clear that the dispute between the parties is civil in nature and the fact as to whether the alleged agreement to sell was ever executed by the respondent or not and whether she committed any breach of contract, is a matter which is required to be adjudicated upon by the civil court. Even otherwise, the petitioner-complainant has availed his remedy in civil court by filing a suit for specific performance, which has been decreed in his favour and refund of earnest money along with interest has

been ordered, though the learned civil court has not granted any compensation.

I have heard learned counsel for the parties.

The cheques in question have been issued in furtherance of the execution of the agreement to sell and the said agreement between the parties is already subject matter of civil proceedings. As informed by the parties, the suit for specific performance has been decreed in favour of the petitioner, for which, execution proceedings have been initiated. In order to ascertain the fact as to whether the agreement to sell dated 25.5.2005 was executed between the parties or not, is a matter, which is beyond the scope of a criminal Court. The question whether there is any breach of contract by the respondent-accused, can be adjudicated upon only by the Civil Court. The cheque amount would be payable only if there is breach of contract committed by the respondent-accused and the fact whether the petitioner is entitled to damages from the respondent-accused is again based on breach of contract. Thus, the fact as to whether there is a valid agreement executed between the parties and there is any breach of contract, these matters can be adjudicated upon only by the civil court. The proceedings under Section 138 of the Act can only be initiated if cheque in question is issued in discharge of legal liability and the legal liability is again based on the validity of the agreement.

The judgments in Nitin v. Shri Vyankatesh Housing Agency Nagpur (*supra*) and Bapurao Moriram Mankar v. The State of Maharashtra (*supra*), relied upon on behalf of the petitioner are of no help to him, as the same are distinguishable, particularly when the petitioner has

availed the remedy of filing a civil suit for specific performance of agreement to sell, which was decreed and the petitioner has further initiated the execution proceedings.

Thus, in order to establish liability on the respondent-accused, the petitioner is required to establish his case before the Civil Court and in case the petitioner succeeds or has succeeded in Civil Court, he is at liberty to proceed in accordance with terms and conditions, as laid down in the agreement to sell dated 25.5.2005.

Therefore, this Court does not find any illegality in the impugned judgment dated 29.11.2014 passed by learned lower Appellate Court.

Accordingly, the revision petition is dismissed.

September 23, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No