IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2813 of 2016 (O&M)
Date of Decision: August 09, 2016

Sandeep Singh

...Petitioner

VERSUS

Sukhvir Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Guri, Advocate
for the petitioner.

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INDERJIT SINGH, J.

The present revision has been filed by the petitioner Sandeep Singh under Section 401 Cr.P.C. against respondent Sukhvir Kaur, challenging the impugned judgment of conviction and order of sentence dated 28.01.2015 passed by learned Judicial Magistrate Ist Class, Ludhiana vide which the petitioner was convicted and sentenced to undergo simple imprisonment for a period of one year and to pay fine of ₹5000/- and in default of payment of fine, to undergo imprisonment for one month under Section 138 of the Negotiable Instruments Act and also challenging the judgment dated 26.07.2016 passed by learned Addl. Sessions Judge, Ludhiana, vide which appeal filed by the petitioner was dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

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From the record, I find that Sukhvir Kaur complainant-respondent filed the complaint against Sandeep Singh accused-petitioner under Section 138 of the Negotiable Instruments Act. The averments of the complaint as noted down in the judgment passed by learned JMIC, Ludhiana, are as under:-

> *"2. Brief facts leading to the present litigation, put forth by the complainant are that the son of the complainant namely Jatinder Singh wanted to go abroad and to permanently settle there. The accused is running and educational institution of IELTS etc. and the accused induced the complainant that the accuse engaged in the business of sending the people abroad and in case the son of then complainant wants to settle in New Zealand, the accused may get the visa sanctioned and get issued the work permit at very less expenses. On the inducement of the accused, the complainant became agree to send her son abroad through the accused. The deal was settled at Rs. 7,00,000/- and out of total amount, Rs. 4,00,000/- was to be paid prior to the issuance of Visa and the remaining amount of Rs. 3,00,000/- was to be paid after the son of the complainant reached abroad and gets employment there. Initially, the complainant paid Rs. 50,000/- to the accused and then Rs. 75,000/- to the accused in the presence of her son as well as one Jagpal Singh her co-villager and then on 14.06.2013, as per the demand of he accused, the complainant withdrew an amount of Rs. 2,75,000/- from her bank account maintained in HDFC Bank Ltd., Sahnewal, Ludhinaa and paid the same to the accused however, the accused failed to get issued the visa as well as work permit and on the repeated demands and requests made by the complainant, the accused, in order to discharge his part legal liability towards the complainant, issued as cheque bearing no.00874 dated 12.08.2013 for Rs. 2,75,000/- drawn on ICICI Bank Ltd., G.T. Road, Khanna, District Ludhiana in favour of the complainant under his signature and assured the complainant that the cheque will be honoured on presentation.*
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> *3. It has been further averred that the complainant deposit the said cheques in his bank account for collection and the banker of the accused has returned the said cheque in original to banker of the complainant by dishonoring the same vide Memo dated 13.08.2013 with remarks "Funds Insufficient" and thereafter the complainant got served the accused legal notice with registered AD/UPC notice on dated 24.08.2013 through his counsel for calling upon the accused and the accused has received the legal notice but neither the accused replied it nor made the payment of the cheque amount. Hence, the present complaint."*

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The complainant examined herself as CW-1 and tendered into evidence the documents and closed the evidence. On the other hand, accused denied the incriminating evidence against him in the statement under Section 313 Cr.P.C. He pleaded that he is innocent and has been falsely implicated in the present case. The accused raised the defence that before presentation of the cheque in question, he also served a legal notice to the complainant not to produce his cheque or misuse his cheque in this regard. He has also filed civil suit which is pending at civil court, Ludhiana. The complainant knowingly and intentionally cheat him and misused his cheque. In this regard he also filed criminal complaint against the complainant which is pending at JMIC, Khanna. He also stated that daughter of complainant was studying with his institute.

Learned JMIC, Ludhiana, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Ludhiana vide judgment dated 26.07.216.

Aggrieved from the above-said judgments, present revision petition has been filed.

From the record, I find that the learned Magistrate after appreciating the evidence in right perspective held that presumption was not rebutted by the accused by raising probable defence and the defence raised by the accused is not duly supported and corroborated by cogent evidence. Learned counsel for the petitioner, at the time of argument, argued that accused-petitioner gave legal notice on 07.08.2013 to the son and daughter of the complainant for not misusing the cheque. The Court has not believed this version. Firstly, no notice has been given to the complainant and

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secondly, the accused has not made any attempt to get the payment stopped of the cheque in question by writing a letter to the Bank.

From the record, I also find that this version cannot be held as probable. The accused himself has not appeared into the witness box to depose as per his defence version that he gave the cheque to the daughter of the complainant, who was studying in his institute. Further, copy of the notice has been produced by Ahlmad, which was in the civil suit. No postal receipt has been placed on record to show that actually the legal notice has been sent. Learned Courts below further held that the contention of the accused does not seem to be reliable that how the cheque had come into the hands of the complainant. He has mentioned in the complaint only that the cheque has been misused by the complainant. As already discussed, he did not appear into the witness box to depose these facts which he has taken in his defence.

Secondly, the Court held that the criminal complaint has been filed by the accused-petitioner after filing of the present complaint. The defence witness has also admitted that accused is running a institute in the name and style of M/s Sandeep's IELTS and giving IELT coaching and training to the aspirants to go abroad and even this fact has been admitted by the accused in the complaint R-1 filed under Section 420 IPC against the complainant. DW-2 Adarsh Kumar, who is real brother of the accused, has also admitted that accused is running IELTS training centre. It also looks otherwise improbable that accused, who is running IELTS and training the aspirants to go abroad, would hand-over the cheque to the daughter of the complainant for his going outside.

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The findings given by learned Courts below are correct, as per evidence and law. In no way, the judgments passed by learned Courts below can be held as perverse. No illegality has been committed while passing the impugned judgments. Nothing has been pointed as to which material evidence has been misread or which material evidence has not been considered by learned Courts below. This is a revision petition and in the revision petition, this Court is not to re-appreciate the evidence, like Court of an appeal and this Court is only to see whether any findings are perverse or against the evidence and law.

In view of the above discussion, I find that the findings given by learned Courts below are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

August 09, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **No**

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