

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.4267 of 2015 (O&M)
Date of Decision: May 11, 2016

Tarsem Singh

...Petitioner

VERSUS

Gurdev Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sarju Puri, Advocate
for the petitioner.

Mr.H.S.Kundra, Advocate
for respondent No.1.

Mr.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Tarsem Singh against respondents Gurdev Singh and State of Punjab under Section 401 Cr.P.C. challenging the impugned judgment of conviction and order of sentence dated 24.05.2014 passed by learned Addl. Chief Judicial Magistrate, SBS Nagar, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹4000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month under Section 138 of the Negotiable Instruments Act and also challenging the judgment dated 25.08.2015 passed by learned

Sessions Judge, SBS Nagar, vide which appeal filed by petitioner was dismissed but the sentence of the petitioner was reduced to 1½ years instead of two years.

Notice of motion was issued and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the revision petition.

The brief facts of the case as noted down in the judgment passed by learned ACJM, SBS Nagar, are as under:-

“The brief facts of the present complaint are that the accused owed a sum of Rs.5 lacs to the complainant and the accused in order to discharge his liability, issued a cheque No.015852 dt.11.08.2008 for the discharging his liability. The complainant presented the same through his bank State Bank of Patiala ,Nawanshahr for collection from drawee bank i.e. Centurian Bank of Punjab on 12.08.2008 and the said cheque was returned with a remarks " insufficient funds" vide memo dated 12.8.2008. At the time of issuing the cheque in question, the accused had assured the complainant as to encashment of the same .After dishonour of the cheque, a legal notice was issued to the accused on 20.08.2008 calling upon him to make the payment of the dishonoured cheque within 15 days from the date of receipt of the said notice but to no effect. Hence, this complaint.”

Learned ACJM, SBS Nagar, 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 Sessions Judge, SBS Nagar vide judgment dated 25.08.2015 but the sentence of the petitioner was reduced to 1½ years.

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

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the record shows that complainant in cross-examination has deposed that he has given the money to Tarsem Singh in the first week of June 2008 in the presence of Manager Devender Singh. He also proved the cheque returning memo, legal notice and postal receipt.

On the other hand, the accused-petitioner has simply denied the loan as well as issuance of cheque. No defence of any type has been raised by the accused nor it was got supported and corroborated from any evidence i.e. either from the cross-examination of the complainant or from the defence evidence nor any defence evidence has been led in this case. The mere denial of the accused is not sufficient to rebut the presumption under Section 139 of the Negotiable Instruments Act. The cheque is in the hand of complainant and it is from the account of the accused and it is not the case of the bank that signature differs, rather, the cheque has been dishonoured on the ground of insufficient funds. As the accused-petitioner has not raised probable defence in the present case, therefore, he is not liable to be acquitted. The judgment passed by learned Sessions Judge, SBS Nagar, while dismissing the appeal, is also correct, as per evidence on law.

This is a revision petition and in the revision petition, this Court is not to re-appreciate the evidence like Court of an appeal. In no way, the findings given by the Courts below can be held as

perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below. Therefore, the concurrent findings of the Courts below regarding conviction are correct, as per law and the same are upheld.

Learned counsel for the petitioner, in the alternative, prayed for reduction of the sentence imposed upon the petitioner.

Keeping in view the facts and circumstances of the present case and in view of the fact that the petitioner is more than 72 years of age and is suffering from long protracted criminal proceedings for the last more than seven years and in view of the fact that petitioner is only bread earner of the family, the sentence imposed upon the petitioner is reduced and he is directed to undergo rigorous imprisonment for a period of one year instead of one and half years. However, the sentence of fine and in default sentence will remain the same.

With the above-said modification in the sentence, the present revision petition stands dismissed.

May 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE