

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 4505 of 2015

Date of decision : June 06, 2016

Baljit Singh

....Petitioner

versus

The Patiala Central Cooperative Bank Ltd.

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. BPS Virk, Advocate, for the petitioner
Mr. Deepak Bhardwaj, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

The revisionist-petitioner through this invocation by way of criminal revision under section 401 of the Code of Criminal Procedure (in short, Cr.P.C.) has sought to lay challenge to the judgment of conviction dated 4.12.2014 passed by learned Judicial Magistrate Ist Class, Patiala and which was subsequently upheld by the first appellate court of learned Additional Sessions Judge, Patiala through judgment dated 19.10.2015.

The brief background that needs to be highlighted is that the Patiala Central Cooperative Bank Ltd (in short, the Cooperative Bank), the respondent before this Court filed a complaint under section 138 of the

Negotiable Instruments Act, 1881 (in short, the Act) against revisionist-petitioner Baljit Singh. The allegations were that the accused had approached the Cooperative Bank for housing loan of Rs 2,25,000/- and which request was processed and sanctioned in January, 2007 claiming that the amount stood disbursed. It was in acknowledgment of this loan amount, the complainant claims that the accused had earlier issued cheque dated 21.12.2011 bearing No. 068859 for a sum of Rs 3 lacs from his account drawn on UTI Bank Limited, thus acknowledging the liability. The said cheque as per these allegations was returned back unpaid through memo dated 22.12.2011 with the remarks "account closed" leading to service of legal notice on 9.1.2012 and hence the complaint in question.

The court of learned Judicial Magistrate Ist Class, Patiala through judgment dated 4.12.2014 convicted the accused under section 138 of the Act and sentenced him to undergo RI for one year and which was upheld by learned first appellate court through judgment dated 19.10.2015.

The lone contention of the counsel for the revisionist is that the amount in question was never disbursed to the revisionist and that the bank has failed to establish the same. The same is controverted on behalf of the respondent-bank by Mr. Deepak Bhardwaj who has sought to harbour around the fact that the revisionist accepted his signatures on the cheque Ex. C5 and therefore, admitted the fact of having applied for the loan, nullifies the stand of the revisionist.

Heard.

Section 139 of the Act raises a presumption in favour of the holder of cheque and thus to presume that he had received the cheque in discharge of whole or in part liability or any debt. Though this presumption is rebuttable one and thus, it was the revisionist-convict who was at liberty to have established it otherwise. This Court has sought to scan the evidence and rather the utter failure of the poor petitioner on account of incompetent persuing of his case has led to such a pitiable state. It needs to be reiterated here that as per the own document of the bank Ex. C9 they claimed that by virtue of demand draft No. 055956 they have advanced the loan on 9.1.2007. It is the allegations of the complainant bank that the cheque was issued by the accused on 21.12.2011 and thus after more than four and a half years of the disbursement of the loan and even after the period of limitation for recovery of this loan having expired. Even a close look at the original cheque depicts that the signature of Baljit Singh, the amount in words and figures is in one hand whereas the name of the bank has been subsequently appears to have been filled-in in black ink with different handwriting clearly depicts that all is not well in the averments of the complainant and rather after having obtained a blank cheque from the accused had subsequently filled in when the accused had already closed account are matters which too have a strong bearing on the case of the complainant.

Though the proceedings under section 138 of the Act are mere of summary nature being triable as summons case but that does not absolves

the bank from leading evidence to prove its case prima facie. Though the bank did not initially prove any statement of account but subsequently has come up with photostat copy of the loan ledger Ex. C9/C10 which is not only illegible but does not truly depict the details of the withdrawals when the account was opened or any necessary details and entry regarding legal expenses dated 24.7.2008 shows that the amount for issuance of notice under section 138 of the Act and for filing of complaint have been deducted when the complaint was filed on 1.2.2012 are matters which certainly stirs the judicial conscience. In between there is nothing to reflect from the side of the bank that it has called upon the client in the present case to repay the loan amount are too matters of significance. However, there has been total lack of efforts of the defence counsel to have brought about evidence to justify the illegitimacy of such a demand raised by the bank and the fact as to the non-disbursement of the amount and which certainly undermines the case of the defence. Even the ledger copy a mere photostat without any authenticity attached too is highly suspect as a piece of evidence, much less the entries made therein. Thus, the utter failure of the accused to rebut these presumptions, as has been observed by the learned first appellate court, certainly goes against him. Apparently, the illiteracy of the revisionist and lack of sound legal advice and poor conduct of the case by his counsel has been responsible for this failure of the revisionist to prove his case. Thus, in view of this, the findings of the learned Magistrate and so the first appellate court cannot be disturbed. However, having regard to the

fact as is submitted by his counsel, the petitioner is aged around 57 years and has out of the awarded sentence has undergone more than seven and a half months together with the fact that the petitioner has also been burdened besides sentence of imprisonment with a fine by way of compensation equal to the cheque amount are matters which calls upon for taking a lenient view being a desolate farmer and without any criminal history and background, it would be in the interest of justice and fitness of things to uphold the judgments of conviction and thereby to reduce the sentence of imprisonment to nine months.

With the aforesaid modification in sentence, the instant revision petition stands disposed off.

June 06, 2016
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(Fateh Deep Singh)
Judge

Whether referred to the Reporter ? Yes/No