

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.4959 of 2015 (O&M)

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Date of decision:11.5.2016

Amarjit Singh

...Petitioner

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vinod K. Kaushal, Advocate for the petitioner.

Ms. Shivali, Assistant Advocate General, Punjab for the
respondent-State.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned judgment dated 15.10.2015 passed by learned Additional Sessions Judge, Amritsar, vide which the appeal filed by the petitioner against the impugned judgment of conviction and order of sentence dated 16.2.2015 passed by learned Sub Divisional Judicial Magistrate, Baba Bakala, Distt. Amritsar, convicting the petitioner for the offence under Section 420 IPC and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo simple imprisonment for two months, has been dismissed, but the sentence has been reduced to rigorous imprisonment for two years instead of three years.

Notice of motion was issued in this case. Record of the lower Courts was also summoned.

Ms. Shivali, learned Assistant Advocate General, Punjab has put in appearance and contested this petition.

I have heard learned counsel for the petitioner and learned Assistant Advocate General, Punjab and have gone through the record.

The brief facts of the case as noted down in the judgment of Sub Divisional Judicial Magistrate, Baba Bakala, are as under:-

“Brief facts of the prosecution case are that the FIR of this case was registered against the accused on an application filed by complainant Gurinder Singh son of Sadhu Singh, Manager Padda Tractors, before Deputy Superintendent of Police, Baba Bakala, in which he levelled allegations against both the said accused persons on the averments that Padda Tractors Rayya is authorized dealer of Swaraj Tractors and having a showroom at G.T. Road, Rayya. Said Gurinder Singh is working as Manager at Padda Tractors Rayya. On 26.3.2010 above said Amarjit Singh and Tarlochan Singh approached to the showroom for purchase of Swaraj 855 Tractors. At that time Amarjit Singh gave Rs.5,000/- and a cheque bearing No.599361 dated 24.3.2010 of Punjab National Bank Branch, Amritsar Cantonment for the sum of Rs.2,00,000/- in favour of Padda Tractors and also issued an another cheque of Rs.2,90,000/- bearing No.501136 dated 1.5.2010 of ICICI Bank, Hall Bazar,

Amritsar in favour of said concern. The Padda Tractors handed over/delivered the tractor Swarj 855 bearing chassis No.WQCD61618131429, Engine No.47.1402/SND 1875 to accused Amarjit Singh and Tarlochan Singh. Amarjit Singh signed the register in token of delivery of tractor Swaraj. Then Padda Tractors presented the cheque bearing No.599361 in his account at Punjab National Bank Branch Rayya, but the said cheque was dishonoured with the remarks "Insufficient Funds". It is further averred that above said Amarjit Singh and Tarlochan Singh have played fraud with Padda tractors as they have taken away the tractor from the showroom and has not paid the cost of tractor. It was in the knowledge of said persons that they have no funds in their accounts and intentionally, knowingly and willfully issued bogus cheques while playing fraud upon the complainant concern. On the basis of said application, prima facie a case u/s 420 IPC was found and registered against accused. During investigation on 10.4.2010 accused Amarjit Singh was arrested and from his possession said tractor was recovered. On 26.4.2010 statement of Manager of Punjab National Bank was also recorded and Manager of the bank stated that cheque qua account No.3395000101031950, was returned back due to insufficient funds and drawers signature differs. On 19.5.2010 Tarlochan Singh was released on bail and joined in the investigation as

per order dated 30.4.2010 passed by the Court of Sh. A.P. Batra, Id. Addl. Sessions Judge, Amritsar. Thereafter on completion of investigation, accused were challaned for the offences punishable u/s 420 and 120-B IPC.”

On presentation of challan, finding prima facie case against the accused, they were charged-sheeted for the offences under Sections 420 and 120-B IPC, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Gurinder Singh-complainant as PW-1, Navdeep Singh as PW-2, HC Jagir Singh as PW-3, Ranjit Singh as PW-4. Since the prosecution failed to conclude its evidence despite availing numerous effective opportunities including last opportunity, finding no justification, the evidence of the prosecution was closed by order.

At the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution, but they denied the correctness of the evidence and pleaded themselves as innocent.

In defence evidence the accused examined Gurbaj Singh, Civil Ahlmad as DW-1, who proved the copy of plaint filed by M/s Padda Tractor against them, suit under Section 37 of C.P.C., which is Ex.D.1.

The learned Sub Divisional Judicial Magistrate, Baba Bakala, after appreciating evidence convicted accused Amarjit Singh for the offence under Section 420 IPC and sentenced him to undergo sentence as mentioned above. The appeal filed by the present petitioner was dismissed, however,

sentence was reduced from three years to two years rigorous imprisonment. However, accused Tarlochan Singh was acquitted of the charges framed against him.

A perusal of the record shows that PW-1 Gurinder Singh is Manager of Padda Tractors and PW-2 Navdeep Singh is owner. A perusal of the facts of the case itself shows that there was no intention of cheating from the very beginning of the present revision petitioner. The simple case is that the petitioner approached the show room for purchase of Swaraj tractor. At that time, Amarjit Singh gave ₹5,000/- and cheque bearing No.599361 dated 24.3.2010 for a sum of ₹2 Lacs and also issued another cheque bearing No.501136 dated 1.5.2010 for ₹2,90,000/-. The complainant Padda Tractors handed over the delivery of tractor Swaraj to accused Amarjit Singh and Tarlochan Singh. A perusal of these facts shows that the complainants themselves agreed to deliver the possession after receiving the cheques amounting to ₹4,90,000/- and ₹5,000/- in cash. They were fully aware at that time that the cheque may dishonour. There is no inducement on the part of the accused vide which he made the complainant to deliver the tractor and further there is nothing on the record to show that there was any such intention of cheating the complainant from the very beginning. It is simple and purely a case of dishonourment of the cheques issued by accused. There is nothing on the record to fulfil the ingredients of cheating. Merely the cheques, which have been issued by Amarjit Singh, have been dishonoured itself will not amount to cheating. It was for the complainant company to get the money in cash or to press for demand drafts

etc. at the time of delivery of the cheques or they should not have delivered the tractor till the encashment of the cheques. So a perusal of the record shows that it is purely a case of dishonouring of the cheque and no cheating has been proved by the prosecution by leading a cogent evidence as the intention to cheat from the very beginning has not been shown by the prosecution. Further more, the filing of the civil suit by the petitioner as Ex.D.1 also shows that it is a case of civil nature and at the most dishonouring of the cheque. But no complaint under Section 138 of the Negotiable Instruments Act has been filed. In no way, it can be held that the offence under Section 420 IPC is made out. The judgments passed by the Courts below are incorrect and are not as per evidence and law.

Therefore, finding merit in the present revision petition, the same is accepted. The judgments and order passed by the Courts below, being not as per law and evidence, are set aside. Petitioner Amarjit Singh is acquitted of the charges framed against him. Petitioner Amarjit Singh, who is in custody, be released forthwith if his custody is not required in connection with any other case.

May 11, 2016.

(Inderjit Singh)
Judge

hsp