

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.4961 of 2015 (O&M)

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Date of decision:11.5.2016

Devender Kumar

...Petitioner

v.

Kanshi Ram Chhabra and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.S. Sheoran, Advocate for the petitioner.

Mr. Anurag Jain, Advocate for the respondent No.1.

Mr. Anil Kumar Lamcharia, Advocate for the U.T. Chandigarh.

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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 7.10.2015 passed by learned Additional Sessions Judge, Chandigarh, vide which the appeal filed by the petitioner against the impugned judgment of conviction and order of sentence dated 7.11.2014 passed by learned Judicial Magistrate Ist Class, Chandigarh, convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') and sentencing him to undergo rigorous imprisonment for one year and to pay compensation of ₹7,50,000/- to the complainant within two months, has been dismissed.

Notice of motion was issued in this case.

Mr. Anurag Jain, learned Advocate has put in appearance on behalf of respondent No.1 and Mr. Anil Kumar Lamcharia, learned Advocate has appeared for U.T. Chandigarh and contested this revision petition.

I have heard learned counsel for the parties as well as learned counsel for U.T. Chandigarh and have gone through the record.

The brief facts of the case are that a complaint has been filed by Kanshi Ram Chhabra against Devender Kumar for the offence under Section 138 of the NI Act (as amended upto date). It is mainly stated in the complaint that the accused purchased a truck TATA 2518 bearing registration No.HR-39-A-7136 from complainant for a consideration of ₹13.5 Lacs and in discharge of partial liability issued cheque bearing No.581301 dated 15.12.2011 for ₹7.5 Lacs drawn on Oriental Bank of Commerce, Hissar. The said cheque on presentation was returned unpaid by the Bank of the accused vide memo dated 14.2.2012 with the remarks “insufficient funds”. Legal notice was issued and when the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Chandigarh convicted the present petitioner under Section 138 of the NI Act and sentenced him to undergo rigorous imprisonment for one year and to pay compensation as mentioned above. Aggrieved against this judgment and order the petitioner filed appeal before the learned Additional Sessions Judge, Chandigarh which was dismissed vide judgment dated 7.10.2015.

From the record, one thing is clear that there is no document to show that the truck was sold for ₹13.5 Lacs. There is only statement of the complainant that the truck was sold for ₹13.5 Lacs whereas learned counsel for the petitioner-accused states that the actual sale consideration was for ₹9 Lacs out of which payment of ₹6 Lacs is admitted and for the balance payment blank cheque was issued as security. It is the defence of the accused that the remaining amount was paid in three instalments as mentioned in his statement, but the complainant neither issued a receipt nor returned the cheque. The case of the accused is also that if the price of the truck was ₹13.5 Lacs, the complainant would have never got ownership of the truck transferred in the name of the accused without taking entire sale consideration. The entire sale consideration was paid by the accused, only then the ownership was transferred. From the record, I find that a probable defence had been taken by the accused. The complainant admitted that he has no document to show that the price was fixed at ₹13.5 Lacs. The complainant also deposed that the accused worked with him for four years as driver. The complainant also stated that he received cheque in question in December 2011 and given NOC for transfer of ownership. The complainant admitted that he received ₹6 Lacs on 1st December 2012 from accused through self-cheque. The complainant further admitted that he had not reflected ₹6 Lacs received from the accused in his balance-sheet Ex.C.6. In view of this cross-examination of the complainant, it is clear that the complainant has already given the NOC regarding transfer of the truck and the truck in question has already been transferred from complainant to the

accused. The defence is raised by the accused that he issued the cheque as security and later on he paid all the amount. The complainant admitted the receipt of ₹6 Lacs from the accused but deny the fact that entire payment has been received. The learned Magistrate has disbelieved the version of the accused that the price of the truck was ₹9 Lacs by stating that there is no evidence produced by the accused to show the sale price of the truck as ₹9 Lacs, but at the same time, the complainant has also failed to show that the price was fixed at ₹13.5 Lacs. If the amount of ₹7.5 Lacs remains due payable to the complainant by the accused, then why the complainant got transferred the truck in the name of the accused. Further more, as per the case of the complainant this cheque of ₹7.5 Lacs is dated 15.12.2011 and as per the complainant he admitted to have received ₹6 Lacs on 1.2.2012. Even if it is taken as it is then out of ₹7.5 Lacs, ₹6 Lacs have been paid by the accused after the issuance of the cheque and only ₹1.5 Lacs remain which means the legal notice should have been issued for ₹1.5 Lacs and not for ₹7.5 Lacs. Raising excess amount in the legal notice makes the legal notice as invalid. The Courts below failed to appreciate these facts while convicting the accused (present revision petitioner). The accused is to raise probable defence and not to prove the defence beyond a reasonable doubt. The accused has raised probable defence which is duly supported and corroborated from the evidence of the complainant as well as defence evidence. The version of the complainant is also not believable as he admits the receipt of ₹6 Lacs from the accused, but that amount has not been shown in his balance-sheet Ex.C.6.

Therefore, in view of the above discussion, I find that the judgments passed by the Courts below are not as per evidence and the findings are perverse. The evidence was not read in right perspective and the Courts below have misread the evidence. Therefore, the judgments passed by the Courts below are liable to be set aside as these are not as per evidence and law and the same are set aside.

The present revision petition is allowed and petitioner Devender Kumar is acquitted of the charges as framed against him. Petitioner Devender Kumar, 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