

In the High Court for the States of Punjab and Haryana
at Chandigarh

(Sr.No.304)

CRR No.1823 of 2006 (O&M)
Date of Decision:-July 10, 2017

H.S.Saini

.....Petitioner

Versus

M/s Prime Hydraulic Pacumatic (P) Ltd. and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Ms. Aditi Girdhar, Amicus Curiae,
for the petitioners.

None for respondent No.1.

Ms. Ruchika Sabherwal, Assistant Advocate General, Punjab.

Gurvinder Singh Gill J.

1. The petitioner namely H.S.Saini has filed the present revision petition challenging judgment dated 28.08.2006 passed by Additional Sessions Judge (Fast Track Court), Ludhiana vide which his conviction under Section 138 of Negotiable Instruments Act (for short "the Act") as recorded by the Judicial Magistrate Ist Class, Ludhiana as well as the sentence of imprisonment for a period of one year along with fine to the tune of Rs.500/- imposed upon him has been upheld.

2. The matter arises out of a complaint filed by Sh. Amit Saddi, Manager of M/s Prima Hydraulic Pacumatic (P) Ltd. wherein it was stated that he has been authorized by the aforesaid firm to file the complaint. It is alleged in the complaint that H.S.Saini, proprietor of M/s Perfect Hydraulic Engineers used to purchase goods from the complainant company on credit and in discharge of a part of his liability, he had issued a cheque dated 28.12.2000 (Exhibit P-1) for an amount of Rs.22,265/- in favour of the complainant firm. Upon presentation of the same, the said cheque was dishonoured vide Exhibit P-2 and the reason assigned for dishonour was closure of the account in question. The complainant issued the requisite notice but since the accused did not pay the amount due, the complainant filed the present complaint.
3. Upon being summoned, the substance of allegations was served upon the accused to which he pleaded not guilty and claimed trial. The complainant in order to establish the charges framed against the accused examined Ashwani Kumar (PW-1), Braham Dass (PW-2) and Amit Saddi (PW-3). The accused in his statement recorded under Section 313 Cr.P.C. denied the allegations being incorrect and pleaded innocence. The accused in his defence examined Dilbagh Singh (DW-1) and Lakhwinder Singh (DW-2) who have stated to the effect that in the month of November 2000 there was a theft in the office of Sh. H.S.Saini (accused-petitioner) and a cheque book and other important documents were stolen from his office.
4. The trial Court upon perusal of the record and after hearing learned counsel for the parties held the accused-petitioner guilty of having committed an offence punishable under Section 138 of the Act and sentenced him to

undergo imprisonment for a period of one year and also imposed a fine amounting to Rs.500/- vide judgment dated 18.02.2005. The accused-petitioner preferred an appeal against the aforesaid judgment but the same was also dismissed by the Additional Sessions Judge (Fast Track Court) Ludhiana vide impugned judgment dated 28.08.2006. Feeling aggrieved by the same, the petitioner has challenged the same by way of filing the present revision petition.

5. I have heard the learned counsel for the petitioner as well as learned counsel representing the State.
6. Learned counsel for the petitioner has challenged the impugned judgment on the ground that infact it is a case where the cheque book of the petitioner had been stolen and the same apparently had been misused by the complainant. Learned counsel in order to support the aforesaid contention has referred to the testimony of Dilbagh Singh (DW-1) and Lakhwinder Singh (DW-2) who have both stated regarding the theft of the cheque book of Sh.H.S.Saini from his office in the month of November 2011. Both the aforesaid witnesses have also stated that the matter regarding theft of cheque book had also been reported to the police.
7. Learned counsel has further submitted that infact the complainant had also been unable to establish the existence of any legal liability regarding the amount allegedly due to the complainant and that in fact the bills in question Exhibits Ex.P6 to Ex.P-13 are in the hand of one Narinder Singh whose signatures are there on the said bills but who has not been examined by the

complainant. Learned counsel has submitted that in view of the aforesaid infirmities the conviction of the petitioner cannot sustain and has thus prayed for setting aside the impugned judgment and for acquittal of the petitioner.

8. None has appeared on behalf of the respondent complainant. However, the learned State counsel has assisted this Court and has submitted that all the necessary ingredients of the offence are duly made out and that the impugned judgment does not suffer from any infirmity.
9. Having considered the rival submissions and upon perusal of record of the case, I find that the plea raised by the petitioner regarding theft of his cheque book is obviously an after-thought and is not even duly supported by the evidence on record. Though Dilbagh Singh (DW-1) and Lakhwinder Singh (DW-2) both have stated that a theft had taken place in the office of G.S.Saini in month of November 2000 but it is highly improbable that a businessman would store his signed blank cheques in his office. The petitioner, who was proprietor of a firm cannot be said so naive so as to keep blank signed cheques in his office. Further it does not appeal the reason that the thieves would commit theft in the office merely to steal documents or a cheque book more particularly when usage of a cheque would easily track-down the user through his bank account particulars. Though, the witnesses of the accused have stated that the matter was reported to the police but neither any copy of FIR nor any report has been brought on record. No official of the police department has even been examined to substantiate the aforesaid plea. In these circumstances the plea of the accused/petitioner that the cheque book had been stolen from the office of the accused cannot be accepted.

10. As regards the contention regarding non-existence of a legal liability is concerned, I find that PW-3 Amit Saddi has specifically stated that the accused H.S.Saini is proprietor of M/s Perfect Hydraulic Engineers and had been purchasing goods from the complainant from time to time on credit basis and that an amount of more than Rs.50,000/- approximately was outstanding against the accused and that in order to discharge his liability the accused had issued a cheque dated 28.12.2000 (Exhibit P-1) for an amount of Rs.22,265/-. He has proved the bills in respect of the transactions as Exhibits P-6 to P-13. During the course of cross-examination he has stated that the bills are not in his hand but bear his signatures. Nothing could be shown to this Court so as to doubt the credibility of the said witness or to make any dent in his testimony as regards issuance of the bills in question and the existence of a liability of the accused to pay the amount in question.
- 11 As such I do not find any infirmity in the findings of conviction as recorded by the courts below and the same are upheld.
- 12 During the course of arguments, the learned counsel for the petitioner has submitted that in fact he had already deposited a draft for an amount of Rs.22,265/- in this Court and that the matter may be compounded. I have considered the aforesaid submissions. I find that the aforesaid draft in question was never got encashed by the respondent/complainant. In fact, on 23.4.2007, the learned counsel for the respondent had stated that the respondents are not ready to accept the amount which has been deposited by way of draft. In view of the aforesaid categorical statement of counsel for the respondent, there is no question of compounding the matter. In view of the

discussion already made above, I do not find any ground for interfering with the findings of the courts below as regards the conviction of the accused and the same are hereby upheld. There is no merit in the revision petition and the same is hereby dismissed.

July 10, 2017
mohan/kamal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No