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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-537-2007

Date of Decision : April 27, 2017

Khem Chand ... Petitioner

Versus

Ramesh Chand Respondent

CORAM : HON'BLE MR. JUSTICE [DR.] SHEKHER DHAWAN

Present Mr. S.K.Garg Narwana, Senior Advocate,
with Ms. Shweta Nahata, Advocate,
for the petitioner.

Mr. Sumeet Jain, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision is directed against the judgment of conviction dated 26.2.2003 and order of sentence dated 27.2.2003 passed by learned Judicial Magistrate Ist Class, Palwal, whereby the petitioner, alongwith other co-accused of this case, was convicted and sentenced as under:-

Under Section	Sentence	In default
Section 379/34 IPC	to undergo Rigorous Imprisonment for a period of one year.	-
Section 403/34 IPC	to undergo Rigorous Imprisonment for a period of Six months.	-

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Under Section	Sentence	In default
Section 417/34 IPC	to undergo Rigorous Imprisonment for a period of three months.	-
Section 426/34 IPC	to undergo Rigorous Imprisonment for a period of three months.	-
Section 468/34 IPC	to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.1000/-	to further undergo RI for three months.
Section 469/34 IPC	to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.500/-	To further undergo RI for One month.

All the sentences were ordered to run concurrently.

2. The appeal filed by the petitioner was partly allowed by learned Additional Sessions Judge, Fast Track Court, Faridabad vide judgment dated 6.3.2007 and the petitioner was acquitted of the charge under Section 379 IPC. However, the sentence awarded by learned trial Judge under remaining Sections was maintained.

3. Facts relevant for the purpose of decision of the revision; that Ramesh Chand, complainant had filed a Criminal Complaint under Sections 379, 403, 417, 426, 465, 468, 469 read with Section 34 IPC against M/s Khem Chand & Co., [a partnership firm carrying on business of Commission Agent] and its partners, Khem Chand, Puran, Balbir Singh and Ram Parshad, on the allegation that the complainant was having business transactions with the accused persons. During the period from 28.4.1988 to 26.5.1988, accused persons failed to supply A & C pars of ST-15 forms against the purchase of wheat and barley from the complainant. Thereafter,

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a civil suit, bearing No. 1324 of 1989, was filed by the complainant and 8 ST-15 forms were tendered in the Court vide statement dated 31.1.1991 and as such the said civil suit was dismissed as withdrawn on the same day. Later on, the Sales Tax authorities found A & C parts of Form ST-15 bearing No. B056625 to be bogus and forged one and the complainant was burdened with liability of Rs.5894.40 [Rs.1949.40 as Sales tax and Rs.3,900/- as penalty]. In pursuance to that, the complainant deposited the said amount in Government Treasury on 10.04.1991. As per the allegations of the complainant, Khem Chand, accused dishonestly took ST-15 form from the office of HAFED and had forged the documents and used the same. Since the police had not taken any action, the Criminal Complaint was filed by the complainant.

4. Learned trial Magistrate completed various proceedings of trial including recording of preliminary evidence and summoning of accused persons. After framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. learned trial Magistrate held the accused-persons guilty and convicted and sentenced them vide judgment of conviction dated 26.2.2003 and order of sentence dated 27.2.2003 as detailed above.

5. Aggrieved of passing of judgments of conviction and order of sentence, the accused preferred first appeal which was partly allowed as detailed in para No.2 above. Hence, the petition is before this Court by way of present revision.

6. Learned senior counsel for the petitioner submitted that both the

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Courts below have not considered the most important facts that earlier a civil suit for recovery was filed and at that time, Form ST-15 were given in the Court and the civil suit was withdrawn by the complainant on 31.1.1991. Main allegation against the revisionist is that Ex. A1 was forged one and because of this wrong act of the revisionist, the complainant had suffered financial loss and he had to make payment of Rs.5849.40 ps., on account of tax amount and penalty as demanded by Sales Tax Department. The said amount has already been paid in civil suit along with interest. Present criminal complaint was filed because of the inimical relations between the complainant and the revisionist. Otherwise, there was no reason for the revisionist to give forged form to the complainant just for petty amount of Rs.1949/-. Remaining partners namely, Puran, Balbir Singh and Ram Parshad have already been acquitted whereas, petitioner, Khem Chand in his capacity as partner of M/s Khem Chand & Co., was convicted.

7. Contention was also raised by learned senior counsel for the petitioner that revisionist, Khem Chand had not signed on the stamp. Learned trial Magistrate has placed reliance upon the statement of Expert witness, namely, Som Nath Aggarwal, who was examined as PW-5 by the complainant whereas, he has not considered the opinion of the Expert witness, Naresh Kataria, Hand Writing and Finger Print Expert, examined by the revisionist as DW-2 in his defence, who had also made deposition on the basis of his expert knowledge and report Ex. DW2/7 that signatures of Khem Chand were unfit for the purpose of comparison. The petitioner has already been acquitted of the charge for commission of offence punishable

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under Section 379 IPC and the primary allegation was that ST Form-15 was stolen from the office of HAFED, but no complaint was lodged by HAFED authorities at that stage.

8. Learned senior counsel for the petitioner further contended that the complainant has already died. There was no admission regarding signatures of the petitioner at that stage of the proceedings. Learned trial Magistrate has placed reliance upon the statements having been made by the parties in other proceedings which is not admissible as per law as the certified copies of the statements were not placed on the file and were not proved as per the requirement of law. More so, the petitioner has already suffered the agony of protracted litigation of more than 26 years.

9. While arguing on these points, learned counsel representing the respondent urged that the original complaint was filed against M/s Khem Chand & Co., and its partners. However, learned Additional Sessions Judge accepted the appeal of those partners, who had not signed the forms and signatures of petitioner, Khem Chand were proved on the file. PW-5, Som Nath Aggarwal, Handwriting and Finger Print Expert gave his specific report Ex. PW-5/9 in this regard and learned trial Magistrate had rightly placed reliance upon the testimony of expert witness as well as other documentary evidence available on record and the first Appellate Court affirmed the said findings. The present revision petition is without any merit because both the Courts below have already appreciated the entire material and evidence on file and there is nothing illegal in the judgment of conviction and order of sentence passed by the Courts below against the

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revisionist calling for any interference while invoking revisional jurisdiction of this Court.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that both the Courts below have ignored certain basic facts of this case. First of all, it is not disputed in any way that the original dispute was regarding non-furnishing of eight ST-15 forms and during the proceedings of the civil suit, the said forms were supplied and the suit filed by the complainant was dismissed as withdrawn on 31.1.1991. Though, the complainant had deposited a sum of Rs.5849.40 ps in the Govt. Treasury on account of demand having been raised by the Sales tax department, even the said payment was made by the revisionist long back. It is also not disputed in any way that the dispute had arisen primarily on the basis that Form ST-15 bearing No. B-056625 having been stolen from the office of HAFED and the same was found to be bogus and forged one and was used as such. Had it been a case of stolen document from the office of HAFED, there was no reason for HAFED authorities not to file any complaint or lodge FIR with the police in that regard. This fact falsifies the version of the complainant. More so, the amount of Rs.5849.40 ps., has already been paid by the revisionist and there is no dispute on the said fact.

11. Learned trial Magistrate has mainly placed reliance upon the testimony of PW-5, Som Nath Aggarwal, an expert witness who had made statement on the basis of report, Ex. PW-5/9. But, at the same time, the petitioner also examined Naresh Kataria, Hand Writing and Finger Print

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Expert, as DW-2 in his defence, who had made deposition on the basis of his expert knowledge and report Ex. DW2/7, that signatures were not of Khem Chand on the disputed stamp. Both the Courts below have not dealt with this aspect of the manner in right perspective. Simply saying that the witness examined in defence is not reliable is no ground to discard the testimony of DW-2, an expert witness produced by the revisionists especially when there is no other material to hold the petitioner guilty and to convict and sentence him. Law on the point is also settled that charge in a criminal case is to be proved strictly in accordance with law and presumption of innocence is always in favour of the accused. However, in this case, there was no such material or evidence to hold the petitioner guilty and convict and sentence him for the offence of forgery and or having used forged document.

12. There is another aspect of the matter. Learned trial Magistrate had placed reliance upon the statement made by parties in other proceedings, but the said statements have not been proved in accordance with law by obtaining certified copies and by examining officials to prove the same. Such a view was taken by Hon'ble Madras High Court in **Nanduri Saradamba Vs. Parakala Pattabhiramayya, (1931) 60 MLR 13.**

13. Learned trial Magistrate has also placed much reliance upon the statement having been made by the accused under Section 313 Cr.P.C. whereas, the provisions of the said section are not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. Such a view as taken by Hon'ble Apex Court in **State of Punjab V. Hari Singh and Ors., 2009**

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(2) RCR [Criminal] 143.

14. In view of the above, this Court is of the considered view that the complainant has not been able to prove that revisionist, Khem Chand, as partner of M/s Khem Chand & Co., had forged any document at any stage or used the same for his personal gain and also used the same so as to cause harm to the reputation of the complainant. The case of the respondent-complainant is based on mere assumption and presumption, which he has failed to prove. The revisionist has already suffered the agony of protracted litigation for over 26 years. Both the Courts below have not considered the entire evidence including the evidence led by the revisionist in his defence.

15. Resultantly, the present revision petition is accepted and the judgment of conviction dated 26.2.2003 and order of sentence dated 27.2.2003 passed by learned Judicial Magistrate Ist Class, Palwal, and judgment dated 6.3.2007 of learned Additional Sessions Judge, Fast Track Court, Faridabad are set-aside. The revisionist is acquitted of the charge. The petitioner is on bail. His bail/surety bonds shall stand discharged.

(SHEKHER DHAWAN)
JUDGE

April 27, 2017

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes