237

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 407 of 2009 (O&M)
Date of Decision: 04.08.2017

DARSHAN LAL ***...Petitioners.***

VS.

AMIT GUPTA AND ANOTHER ***...Respondents***

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. G.S. Gopera, Advocate,
for the petitioner.

Mr. Ripu Daman, AAG, Haryana.

Mr. Rakesh Sethi, and Mr. Sachin Gupta, Advocates,
for respondent No. 1.

***

KULDIP SINGH, J. (ORAL)

The present revision has been filed by the petitioner-accused Darshan Lal against judgement dated 14.01.2009 passed by the learned Additional Sessions Judge, Kurukshetra affirming the judgment of conviction dated 08.08.2008 and order of sentence dated 11.08.2008 of learned Judicial Magistrate First Class, Kurukshetra vide which the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for 1 year. He was also directed to pay compensation to the tune of ₹ 2,75,000/- to the complainant within a period of three months.

The facts of the case as made out from the trial court file are that according to the complainant-respondent No. 1, he had advanced some loan to the accused-petitioner. In discharge of the said liability, the accused-petitioner had issued a cheque No. 491543 dated 06.10.2004 amounting ₹2,75,000/- drawn on State Bank of India, Ladwa. The said cheque, when presented, was dishonoured on the same day with endorsement “Exceed Arrangements”.

Thereafter, the petitioner had issued a legal notice dated 07.10.2004. Despite issuing legal notice, cheque amount was not paid, hence, the complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed before the trial Court. The petitioner before the lower Court in his statement recorded under Section 313 Cr. P.C. has taken the stand that he had not issued the cheque rather a cheque book was handed over to the Rajinder Pal Gupta, uncle of the complainant, as a security which was having blank cheques bearing the signatures of accused-petitioner. He has made the entire payment of ₹40,000/- to the uncle of the complainant. When he demanded the documents, the uncle of the complainant stated that these have been lost. Rajinder Pal Gupta then filed a criminal complaint before the Illaqa Magistrate regarding Cheque No. 491547 dated 03.10.2002 amounting to sum of ₹ 4,10,000/- but the same was dismissed for want of prosecution. The revision against the said order was dismissed vide order dated 05.10.2004. It was further stated that the cheque No. 491543 dated 06.10.2004 was used by the complainant-respondent No. 1 to file a false complaint.

Both the Courts below held that the presumption under Section 139 of the Negotiable Instruments Act is not rebutted. It was held that since, legal liability is proved, therefore, the conviction was accordingly awarded.

I have heard the learned counsel for both the parties and have carefully gone through the case file.

Learned counsel for the petitioner has pointed to the complaint wherein no date of advancement of loan was mentioned. It is stated that the said cheque No. 491543 is dated 06.10.2004 amounting to ₹ 2.75 lakh which was presented on the same day and was dishonoured and legal notice was issued on the next date i.e. 07.10.2004. It has been further contended that the uncle of the petitioner was running a chit fund business. The petitioner has handed over certain blank cheques to him bearing his signatures and that the petitioner was put forward as a front man to use one of those blank cheques. Reference has also been made to the complaint filed by the Rajinder Pal Gupta, uncle of the complainant.

In order to examine the manner in which the alleged loan was advanced, it comes out that in the year 2004 the petitioner was of 22 years of age and he was a student of LLB and presently a practicing lawyer. It also comes out from the statement of the petitioner that father of the petitioner was running a cloth shop. The age of the accused is 50 years at the time of recording of statement i.e in the year 2007 which means that in the year 2004 he was 47 years of age. The complainant claims that the accused was known to him as his nephew was studying with him.

The cross examination of the complaint shows that at the time of advancement of loan, the complainant was a student. He had advanced a loan on 15.09.2004 at his cloth shop where nobody else was available. The cheque was issued after some time on 06.10.2004.

I am of the view that the said story put forward by the complainant is not convincing. The complainant was a student at that time and according to him he got this money from his father. It cannot be believed that the father of the complainant will hand over ₹2,75,000/- to his student son for advancing a loan to somebody and that too without any documentary proof or any writing, particularly when the said person is in litigation with the uncle of the complainant on account of loan transactions.

Admittedly, in this case, at the time of advancement of loan no undertaking in writing was obtained from the respondent. Admittedly, there is presumption under Section 139 of the Negotiable Instrument Act but the same is rebuttable. There are several facts to show that the petitioner has been put forward as a front man to use one of the blank cheques to handed over to somebody else, which most probably the Rajinder Pal Gupta, uncle of the complainant. The serial number of the present cheque is 491543 which was stated to have been issued on 06.10.2004. However a copy of the Annexure D-2 shows that Rajinder Pal Gupta, uncle of the complainant had filed another complaint in the year 2004 stating that accused petitioner had issued him a Cheque No. 491545 dated 09.10.2004 for ₹4,00,000/- that was in lieu of the loan advanced to him. Further complaint D-4 shows that Rajinder Pal Gupta also filed another criminal complaint under Section 138 of the Negotiable Instruments Act, 1881, in the year 2002 stating that in lieu of the loan of ₹4,00,000/- advanced to the accused-petitioner, accused-petitioner had issued Cheque bearing No. 491547 dated 03.10.2002 for a sum of ₹4,10,000/- drawn on SBI, Ladwa in favour of the uncle of the complainant. The present cheque No. is 491543 and claimed to have been issued on 06.10.2004 i.e. 2 years later. It is not possible that later cheque was issued 2 years earlier, that too, to the uncle of the complainant.

Learned counsel for the respondent No. 1 has argued that in the revision petition, the petitioner has taken a categoric stand that a Cheque was issued which means one cheque. Whereas, in the statement recorded under section 313 Cr. P.C., it was stated that the entire cheque-book bearing signatures of the complainant was handed to the uncle of the complainant.

I am of the view that if wrong plea against the records is taken at the time of arguments, that is to be ignored. The evidence available on file is to be examined to see as to whether the case is proved or not.

Learned counsel for respondent No. 1 further argued that accused-petitioner did not produce any receipt or document to show that he was having chit fund transaction with the uncle of the complainant.

I am of the view that even if it is not proved that accused was having some Chit Fund transaction with the uncle of the complainant but the evidence available on file shows that he was having some money transaction with the uncle of the complainant for which he is alleged to have issued some cheques which were in the same serial number and rather one of them is having subsequent serial number and alleged to have been issued 2 years earlier to the uncle of the complainant. Therefore, it does give an indication that at least there were some financial transactions between the accused and uncle of the complainant.

From the file of the lower Court, it is proved that at least two cheques alleged to have been issued to the uncle of the complainant one amounting to ₹4,00,000/- and another for ₹4,10,000/-. One cheque was issued on 03.10.2002 and another cheque is stated to have been issued on 09.10.2004 bearing subsequent number that of cheque dated 03.10.2002. However, the cheque issued 2 years earlier cannot normally have subsequent number. This fact also goes to show that the accused-petitioner owed some money to the uncle of the complainant and the alleged loan was not advanced by the complainant to the accused in September 2004.

Moreover, it cannot be believed that the complainant who was a student at that time got a sum of ₹2,75,000/- in cash, which in those days was a big amount, from his father and advanced the same as a loan to the accused that too without any receipt or documentary proof who already owed money to the uncle of the complainant and was having litigation with him.

It being so, I am of the view that the presumption under Section 139 of the Negotiable Instrument Act has been rebutted. This Court comes to the conclusion that the accused-petitioner is most probably the front man of his uncle Rajinder Pal Gupa. The legal enforceable debt as claimed by the complainant is not proved. Hence, the findings recorded by the both the Courts below are found to be perverse and against the records. It is found that both the Courts below failed to appreciate the evidence properly in a right perspective resulting in wrong conclusion.

In view of the foregoing discussion, the present revision is allowed. Judgement dated 14.01.2009 passed by the learned Additional Sessions Judge, Kurukshetra as well as the the judgment of conviction dated 08.08.2008 and order of sentence dated 11.08.2008 of learned Judicial Magistrate First Class, Kurukshetra are hereby set aside and the accused-petitioner is acquitted of notice of accusation served upon him.

August 4, 2017 **(KULDIP SINGH)**
Suresh Kumar **JUDGE**

Whether speaking / reasoned	***:***	✓ ***Yes***	***/***	***No***
Whether Reportable	***:***	✓ ***Yes***	***/***	***No***