

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 1156-2014 (O&M)
Date of decision: 04.10.2017

Shakuntala Devi and another

.....Petitioners

versus

Ajay Kumar Saini

.....Respondent

CRR 1160-2014 (O&M)

Vishal Sood

.....Petitioners

versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Dr.Anmol Rattan Singh Sidhu, Senior Advocate with
Mr.Pratham Sethi, Advocate for the petitioner in
CRR 1160-2014
Mr.K.S.Nalwa, Advocate for the petitioner in
CRR 1156-2014
Mr.Pawan Garg, AAG Haryana
Mr.Sukesh K. Jindal, Advocate for the respondent/ complainant
in both the cases

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

By this Single Judgment, I shall dispose of two connected revisions bearing CRR No.1156 of 2014 and CRR No.1160 of 2014, arising out of the same judgment and order of the Courts below.

Respondent-complainant Ajay Kumar Saini filed a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 against

V.G. International Private Limited and its Directors, namely, Vivek Sood,

Vishal Sood, Amit Chaudhary and Shakuntla Devi, claiming that the said accused nos.1 to 4 are incharge and wholly responsible for the conduct of the business of the company. Complainant wanted to purchase some agricultural land at or near village Kund, District Rewari. The accused had established a factory at Village Kund for the past several years. Presuming that accused might have knowledge about land there, complainant approached them for the land deal. All the accused in general and accused No.3 in particular assured the complainant to get the contract of sale finalized in view of their acquaintances and agreed to act as mediator. On the asking of the accused, complainant paid Rs.75 lakhs to the accused for the purchase of the land in the year 2008. Accused dishonestly misappropriated the said advance money and failed to arrange for the said deal. When the complainant repeatedly demanded the money back, accused no.3 being the authorized signatory of accused No.5, issued a cheque bearing no.332918 dated 4.9.2008 amounting to Rs.29,56,000/- in favour of the complainant. The cheque when presented to the drawee bank, was returned with the remarks 'exceeds arrangements'. After issuing the legal notice, complaint was filed.

Vivek Sood died during the pendency of the trial. learned Judicial Magistrate First Class, Gurgaon after recording the evidence, held all the accused guilty and consequently, sentenced them to undergo Simple Imprisonment for six months and to pay compensation of the cheque amount i.e. Rs.29,56,000/- to the complainant, vide judgment of conviction dated 12.12.2012 and order of sentence dated 13.12.2012. Appeal against the said judgment was dismissed by learned Additional Sessions Judge, Gurgaon vide judgment dated 2.4.2014.

I have heard learned counsel for both the parties and have also carefully perused the record.

Learned counsel for the petitioners has vehemently argued that in this case, it is not proved that the petitioners were responsible for the conduct of the business. Learned counsel for the petitioner Vishal Sood in CRR No.1160 of 2014 has stated that only Amit Chaudhary was the authorized signatory and responsible for the conduct of the business. He had issued the cheque. Therefore, the other Directors, who had no knowledge about the same, cannot be held liable. It is further contended that there was no legal enforceable debt. Complainant did not file any recovery suit to recover the remaining amount out of Rs.75 lakhs, even after adjusting the present cheque amount of Rs.29,56,000/-. It is further stated that the accused are not the property dealers and they have nothing to do with the land deal. There is no proof of the payment of said huge amount. It is further stated that a DDR dated 7.2.2009 was lodged regarding loss of cheque dated 4.9.2008.

I am of the view that the DDR was lodged much after the initiation of proceedings and only when the complainant issued the show cause notice. It was the company and therefore, it is not possible that the company will keep the signed cheque ready so that it can be misused by anybody. Perusal of the cheque also shows that it is duly filled in and signed by the authorized signatory, namely, Amit Chaudhary. So far as plea is concerned that only Amit Chaudhary was responsible and that Vishal Sood was not responsible for running the affairs of the company, reply of the show cause notice under Section 138(b) of Negotiable Instruments Act, 1881 dated 16.2.2009 (Ex. P11) on behalf of Vishal Sood shows that affairs

of the company and conduct of the business are dealt by Vishal Sood and Amit Chaudhary only and not by other addressees. Meaning thereby, Vishal Sood had admitted in the reply that he is responsible for running the affairs of the company. Shakuntla Devi is admittedly an old lady and there is no proof that she had signed any document. Therefore, the possibility is there that Shakuntla Devi was only the non-active Director. Further, the perusal of the file shows that Shakuntla Devi and Amit Chaudhary had paid a sum of Rs.24 lakhs during pendency of the present petition to the complainant and only a sum of Rs.5,56,000/- was left, which, according to them, is share of Vishal Sood. On 3.8.2017, learned counsel for Vishal Sood sought time to bring a demand draft of Rs.5,56,000/- and the case was adjourned to 7.9.2017, on which date, it was stated that said Vishal Sood is not willing to make the payment and that the payment of Rs.5,56,000/- was to be made in CRR No.1160 of 2014.

It comes out that another complaint was filed against Vishal Sood, in which, a sum of Rs.65 lakhs is stated to have been paid to him. Therefore, non-filing of recovery suit for the remaining amount is immaterial.

Learned counsel for the petitioner has also argued that it has been proved by DW1 Mr.Talwar that only two persons were authorized to sign cheque vide letter dated 28.5.2008. It comes out that the cheque was dishonoured on account of 'exceeds arrangements' and not on account of the fact that it is not signed by two persons. Plea of the petitioner is that the said letter dated 28.5.2008 was procured during pendency of the case in back date.

After examining lower Court record and considering evidence

on file, I am of the view that there is no evidence to show that Shakuntla Devi petitioner was running affairs of the company. She is an old lady. Therefore, she cannot be held responsible for the affairs of the company and issuance of cheque by the authorized signatory Amit Chaudhary. Hence, revision qua Shakuntla Devi is allowed and she stands acquitted of the notice of accusation served upon her.

So far as Amit Chaudhary is concerned, he was authorized signatory and cannot escape liability. However, it comes out that during pendency of the present petition, out of the cheque amount of Rs.29,56,000/-, he along with Shakuntla Devi, had already paid their share of Rs.24 lakhs and remaining Rs.5,56,000/- was to be paid by Vishal Sood, who sought time to pay the amount but later on refused to pay the amount. Since, Amit Chaudhary along with Shakuntla Devi has paid the substantial amount i.e. Rs.24 lakhs out of the cheque amount of Rs.29,56,000/-, which according to them, was their share, therefore, considering his conduct, his sentence for Simple Imprisonment for six months qua him is reduced to the period already undergone by him. So far as Vishal Sood is concerned, he has not paid anything in the present case and has rather tried to escape liability by stating that he is not responsible for running the affairs of the company and the entire burden was sought to be shifted on Amit Chaudhary.

It being so, CRR No.1160 of 2014 filed by Vishal Sood is hereby dismissed. He be re-arrested and be committed to jail to undergo the remaining part of sentence.

CRR No.1156 of 2014 filed by Shakuntala Devi and Amit Chaudhary is partly allowed to the extent that Shakuntla Devi stands

acquitted of the notice of accusation served upon her and sentence of Amit Chaudhary is reduced to the period already undergone by him.

A copy of the order be placed on the connected case file.

04.10.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No