IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2647-2015
Date of decision :25.09.2017

Satnam Kaur

...... Petitioner

Versus

Suman Malhotra

...... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

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Present : Mr. Z.S. Chauhan, Advocate
for the petitioner.

None for the respondent.

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H.S. MADAAN, J.

Complainant - Satnam Kaur had filed a complaint under Section 138 of the Negotiable Instruments Act against Suman Malhotra – accused on the assertions that there had been cordial relations between the two and at the request of the latter, the former granted a friendly loan of ₹4,10,000/- to her for meeting personal exigencies; that the accused had given an assurance to the complainant that she would return the amount within a short span of time, subsequently, the complainant asked the accused several times to return the amount and ultimately to discharge the financial liability she issued cheque No.677245 dated 26.02.2013 for ₹4,00,000/- and cheque No.677244 dated 26.02.2013 for ₹10,000/- drawn on Punjab National Bank, Haibowal Kalan, Ludhiana in favour of the complainant giving an assurance that the said cheques would be encahsed; that the complainant presented the cheques with her banker, which in turn forwarded those to the banker of the accused, but those were dishonoured due to "Insufficient Funds" in the account of accused, the complainant was informed accordingly vide bank memo dated 26.02.2013; that the complainant got issued legal notice dated 14.03.2013 upon the accused, asking her to make payment of cheques amount within a period of 15 days from receipt of notice but to no effect, as such, she filed complaint in the Court of law.

After recording preliminary evidence accused was summoned, notice of accusation was served upon her to which she pleaded not guilty and claimed trial.

The complainant led evidence in the form of getting her statement recorded as CW-1 submitting her affidavit Ex.CA, in which reiterated her version as given in the complaint. She proved various documents i.e. photocopy of agreement Ex.C1, photocopies of cheques Ex.C2 and Ex.C3, original memo Ex.C4, copy of notice Ex.C5 and postal receipt Ex.C6. With that her statement was concluded.

Statement of accused under Section 313 Cr.P.C. was recorded, in which all the incriminating circumstances appearing in evidence of complainant were put to her, but she denied the assertions contending that she is innocent and has been falsely involved in this case. As a matter of fact cheques were lost and in that regard she had lodged a DDR at the police station; the complainant has forged and fabricated the cheques, as a matter of fact the accused had not given any cheque to anybody and the complainant has cheated her and the Court by deposing falsely.

During her defence evidence, accused examined Sh. Raj Kumar who stated that she had lodged DDR No.4 dated 03.06.2012 at Police Post Bus Stand, Ludhiana proving copy of DDR as Mark-A regarding lost cheque of his wife.

After hearing arguments, the trial magistrate vide judgment dated 30.08.2014 convicted and sentenced the accused for offence under Section 138 of the NI Act and sentenced her to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹1,000/- in default of payment of fine to undergo simple imprisonment for one month.

Feeling aggrieved by the said judgment, the accused preferred an appeal in the Court of Sessions, which was assigned to Additional Sessions Judge, Ludhiana who vide judgment dated 05.06.2015 had accepted the appeal, set aside the judgment passed by the Judicial Magistrate Ist Class and acquitted the accused.

It may be mentioned here that the complainant had preferred a separate appeal coming up with a prayer for modification of judgment passed by the trial Magistrate and for enhancement of the sentence to two years and imposition of fine of double the cheque amount, besides, praying for compensation to the complainant. Learned Additional Sessions Judge, Ludhiana vide a single consolidating judgment mentioned above, had accepted the appeal filed by the accused – convict, whereas dismissed the appeal filed by the complainant.

Complainant has preferred the present revision petition praying that the same be accepted and the impugned judgment passed by the Additional Sessions Judge, Ludhiana be set aside and accused be convicted and sentenced. Notice of the revision petition was given to the respondent, which was served and it initially appeared through counsel but subsequently, such counsel stopped putting in appearance.

I have heard learned counsel for the petitioner, besides, going through the record.

The Appellate Court referred to the evidence adduced by the complainant and after critical analysis thereof observed as follows:-

> *"In order to substantiate his version, complainant Satnam Kaur herself stepped into the witness box as CW-1 and reiterated the version, as set-out in the complaint itself. Complainant Satnam Kaur in her cross-examination has admitted that she is running the chicken shop. She does not want to tell the daily sale. She keeps the account of the shop. She does not know regarding saving in the month. She further admitted in her cross-examination that she does not know for what purpose the amount was given to the accused. During the cross-examination, she produced income tax return for the year 2011-2012 Ex.C7, in which gross income shows as ₹1,60,000/-, for the year 2012-2013 Ex.C8, the gross income shows as ₹1,65,000/- and for the year 2013-2014 Ex.C9, the gross income shows as ₹1,75,000/-. She also admitted that*

they are six family members and electricity bill comes ₹5,000/- to ₹7,000/-. Moreover after summoning, complainant produced affidavit in her evidence in which she alleges that accused executed agreement regarding the receipt of the loan on 07.12.2011 in the presence of the witnesses Kulbir Singh & Rajiv Kumar and produced photostat copy of agreement dated 07.12.2011 after summoning the accused in her evidence, but this fact was not mentioned in her complaint or in notice or in affidavit tendered in preliminary evidence. Moreover, complainant did not examine the alleged witnesses namely Kulbir Singh and Rajiv Kumar. It means the complainant prepared forged and fabricated agreement Ex.C1 which is not admissible in evidence. As per latest law laid down by Hon'ble Supreme Court of India in K. Subramani (supra), complainant failed to prove her financial capacity to advance loan and that there is legally enforceable debt payable by accused to her. The learned lower Court convicted the accused on the basis of presumption under Section 118(a) and 139 of NI Act, but learned lower Court did not go through the cross-examination of complainant – Satnam Kaur. No doubt under Section 139 of NI Act, the presumption is required to be drawn, the holder of the cheque has received the same for discharge of any debut or any other liability as by the Hon'ble Supreme Court of India held in "Krishna Jnardhan Bhutt vs. Duttaraya G. Hegde

2008(1) RCR (Criminal) 695. The presumption under Section 139 of NI Act would not extend as to existence of debut or other liability.

Learned Additional Sessions Judge, has further noticed that there was a specific defence taken by the accused that she had not received any loan from the complainant at any point of time and cheque was not issued for discharge of any debut or lability, that there were no-mention of date, month and year of making payment to the accused in the notice got served by the complainant upon accused before filing of complaint under Section 138 of NI Act and affidavit furnished by the complainant Ex.CA. No receipt or cheque was taken at the time of making of payment by complainant to the accused; that no security of any type was taken by complainant from accused at the time of alleged advancement of loan amount; that there was no documentary evidence produced by the complainant to show that she had financial capacity to advance loan of ₹4,10,000/-; that agreement Ex.C1 was prepared later on i.e. after summoning of the accused; that Section *Section* 269 SS of the Income Tax Act insists that all transaction involving ₹20,000/- and above should be through account payee cheques and in the instant case it being not so. Absence of any document to show that there was any stipulation to pay interest between the parties, defence of accused being highly probable rebutting presumption under Section 139 of the NI Act, failure of complainant to prove that there was legally recoverable debt payable by accused to her.

It was as a result of collective effect of such observations that the Appellate Court had accepted the appeal filed by the accused – convict observing that complainant had failed to prove guilt of the accused for offence under Section 138 of NI Act beyond a shadow of reasonable doubt. Such judgment passed by the Appellate Court is not shown to be suffering from any illegality or infirmity rather it is well reasoned one.

The scope of revision petition is quite limited. The revisional Court is to interfere only if the judgment passed by the Court below is patently illegal and perverse which means the error in the judgment must be apparent on the face of it should have been in gross violation of settled principles of criminal jurisprudence. The judgment in hand does not suffer from any such infirmity. It is well settled principle that revisional Court is not be upset the Judgment / order passed by the Court below in a light manner simply because of the reason that another view in the matter is possible.

No ground is made out for interference with judgment passed by the Appellate Court while exercising the reversional jurisdiction by this Court, as such the revision stands dismissed.

(H.S. MADAAN)
JUDGE

25.09.2017
Gaurav Sorot

1. Whether reportable? **No**

2. Whether speaking / reasoned? **Yes**