

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1801 of 2016 (O/M)
Date of decision : 7.11.2017

Randhir Kaur and another

..... Revisionists

Versus

Gurjant Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Piyush Aggarwal, Advocate, for revisionists.

Mr. Karan Garg, Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH J.

Impugned in the present revision is the judgment 15.2.2016, passed by the learned Additional Sessions Judge, Sangrur, affirming the judgment of conviction and order of sentence dated 27.11.2013, passed by the learned Judicial Magistrate 1st Class, Sangrur, vide which both the revisionists were convicted under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act'), and sentenced to undergo rigorous imprisonment for one year each and pay compensation to the tune of cheque amount alongwith interest at the rate of 9% per annum from the date of issuance of cheques till the date of passing of the judgment.

The facts of the case, as claimed in the complaint, are that in order to return the amount to the complainant-respondent,

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revisionists-accused gave two cheque Nos. 110331 and 110332 for Rs. 7,00,000/- and Rs. 2,00,000/- respectively on 5.3.2002 from their joint account, which were signed by both the accused. The cheques, when presented to drawee bank, were returned with remarks 'insufficient funds'. The complainant after issuing the legal notice (Ex.C3) filed the complaint.

I have heard the learned counsel for revisionists-accused, the learned counsel for complainant-respondent and have also carefully gone through the file and the lower Court file as well.

The learned counsel for revisionists-accused has argued that both the Courts below have failed to critically examine the evidence and have misread the evidence. It is contended that there is no legally enforceable debt. Therefore, conviction under Section 138 of the Act cannot be sustained. Also the presumption under Section 139 of the Act cannot be raised. Reliance has been placed upon the judgment in Rangappa Versus Mohan, 2010 (11) SCC 441, wherein Hon'ble the Supreme Court of India has observed as under :-

“14. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

The learned counsel for revisionists-accused has taken this Court to the contents of the complaint wherein it is mentioned that in order to return the 'amount' to the complainant-respondent, the cheques were given. The learned counsel for revisionists-accused has also referred to the legal notice (Ex.C3), served by complainant-respondent, which is in Punjabi, wherein it is again stated that regarding the money transaction, these two

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cheques were issued. The learned counsel for revisionists-accused has argued that revisionists-accused have produced bank official, who proved that the complainant did not have sufficient funds to advance any loan. The learned counsel for revisionists-accused has also referred to the statement made by complainant-respondent in the preliminary evidence wherein it is

stated that both revisionists-accused owed money to complainant-respondent. Even after service of notice of accusation, when the complainant appeared in the witness box and filed his affidavit in examination-in-chief, he has stated that both the accused owed money to him. It was nowhere mentioned that as to exactly on which account accused issued the cheques. The reading of the averments made in the complaint, legal notice as well as statement of complainant show that revisionists-accused owed some money to the complainant, for which cheques were issued. However, when the complainant was cross examined regarding said money transaction, he relied upon several sale deeds and claimed that he had executed sale deeds in favour of accused and that no money was paid to him as sale consideration. Therefore, it was sought to be projected that the cheques were issued in lieu of sale consideration of those sale deeds.

A perusal of the sale deeds Ex.D2 dated 27.8.2000, Ex.D4 dated 2.8.2000, Ex.D6 dated 3.8.2000, Ex.D8 dated 28.7.2000 and Ex.D10 dated 27.7.2000 goes to show that it is recited in all the sale deeds that the vendor Gurjant Singh, who is complainant in present case, has received entire sale consideration at home and nothing is due. The possession of land has also been delivered. Therefore, now, complainant cannot say that some money was due on account of some sale consideration. If some amount was due,

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it might have been mentioned in the sale deeds and in that case, the possession of land is unlikely to be delivered. Therefore, it comes out that both revisionists-accused did not owe any money to the complainant on account of any loan. Moreover, even as per the amended stand of complainant, no money is payable on account of sale deeds, as mentioned above, which were executed in the year 2000.

The learned counsel for complainant-respondent has argued that after cheques were dishonoured, accused lodged a complaint with the police that his cheque book is lost. In this regard, he has averred that he has produced a cheque No. 110330, which was given to revisionists-accused and they had withdrawn Rs. 6,50,000/-, regarding which no complaint was made by complainant. Present cheques are in the same serial number.

I am of the view that even if it is assumed that complainant failed to prove that his cheque book was lost, as claimed by him, the burden to prove that the cheques were issued for legally enforceable debt lies upon the complainant and unless the said burden is discharged, presumption under Section 139 of the Act cannot be raised.

In this case, complainant has miserably failed to prove that he had advanced any loan to accused or that any amount on account of sale deeds, which were executed in the year 2000, as discussed above, was due from both accused. It being so, complainant has miserably failed to prove the legally enforceable debt. Consequently, conviction of both revisionists under Section 138 of the Act is not sustainable in the eyes of law. Consequently, present revision is allowed. The judgment of conviction and order of sentence dated 27.11.2013, passed by the learned Judicial Magistrate 1st Class, Sangrur, and the judgment dated 15.2.2016, passed by

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the learned Additional Sessions Judge, Sangrur, are hereby set aside.

Revisionists stand acquitted of notice of accusation, served upon them.

Revisionists be released forthwith, if not required in any other case.

(KULDIP SINGH)
JUDGE

7.11.2017

sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes