IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 3319 of 2014 (O&M)
Date of decision : 28.11.2017
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Swaran Kaur
................Petitioner

vs.

Manjit Singh
.................Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. S.S. Majithia, Advocate for the petitioner.
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H. S. Madaan, J. (Oral)

Complainant Swaran Kaur had filed a complaint under Section 138 of the Negotiable Instruments act, read with Section 420 IPC against accused Manjit Singh on the allegations that accused had forged Will of Sunder Singh, therefore, complainant through her son Charanjit Singh had approached the police for registration of FIR against him. The matter was enquired into by SP Traffic, Sh. Gurdial Singh. Accused approached the complainant expressing regrets and promised to make payment in the presence of witnesses, with regard to share of Swarn Kaur in the property, which she was supposed to get by way of inheritance. In that regard he had issued cheque No. 052220 dated 18.6.2005, in the sum of Rs.3 lacs, drawn on State

Bank of Patiala, Miller Ganj, Ludhiana, with an assurance that the cheque would be encashed. The complainant believed such contention of the accused. However, when she presented the cheque to her banker, Indian Overseas Bank, Pakhowal Road, Ludhiana, for collection, which in turn sent it to the banker of accused, through clearing house, the cheque was received back un-cashed due to insufficiency of funds in the account of accused and complainant was informed vide memo dated 11.7.2005. The cheque in question was also returned to her. On coming to know about that state of affairs, the complainant served a legal notice dated 18.7.2005 upon the accused, calling upon him to make payment of the cheque amount within 15 days of receipt of notice, but he failed to do so, despite receipt of notice, giving rise to a cause of action to the complainant to file complaint in question.

After recording of preliminary evidence, the accused was summoned to face trial under Section 138 of the Negotiable Instruments Act. The accused put in appearance and notice of accusation was served upon him, to which he pleaded not guilty and claimed trial and the case was fixed for evidence of the complainant.

During the course of evidence of the complainant, she examined CW1 Sadhu Lal, Head Peon, Indian Overseas Bank, Pakhowal Road, Ludhiana, who brought summoned record pertaining to cheque return register containing entry regarding the cheque in question, proving photostat attested copy of the page as Exhibit C7. He also proved certified copy of statement of account of accused with bank as Exhibit C8, showing balance of Rs.782.46

Paise as on 1.7.2005, memo of the bank Exhibit C-2 having remarks 'insufficient funds'. He proved cheque Exhibit C-1.

Complainant Swaran Kaur appearing as CW-2 vide her affidavit Exhibit CX, repeated on oath her version as contained in the complaint. She proved various documents including carbon copy of legal notice Exhibit CW3, postal receipt Exhibit C4, UPC Exhibit C5 and medical certificate Exhibit C6.

CW-3 Amarnath, Record Keeper, State Bank of Patiala, Miller Ganj, Ludhiana, produced the summoned record pertaining to the original cheque return register, copy of which being Exhibit CW3/A.

CW-4 Mohinder Singh clerk-cum-cashier, Indian Overseas Bank, Pakhowal Road, Ludhiana, who produced summoned record with regard to account of Swaran Kaur complainant, proving various documents. With that the evidence of the complainant was closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the evidence led by the complainant were put to him, but he denied all such allegations pleading innocence and false implication. During his defence evidence, the accused examined DW1 Harjit Singh from Complaint branch, Commissioner of Police, Ludhiana, who produced summoned record of criminal complaint of 2341 CR.SSP dated 6.5.2008, moved by Charanjit Singh s/o Mohinder Singh, enquiry of which was entrusted to SP Traffic; the enquiry was conducted and both the parties were heard and a complete file comprising of 110 papers was produced as Exhibit D3. With that the defence evidence was closed.

The trial Magistrate had framed the following points for consideration:-

(i) Whether the cheque is issued by accused in favour of complainant in discharge of financial liability.

(ii) Whether the cheque was dishonoured and accused failed to make the payment inspite of notice.

After hearing arguments, the trial Magistrate convicted the accused for offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.3,000/- and in default of payment of fine to undergo further rigorous imprisonment for 2 months, in addition to that in terms of Section 357 (3) Cr.P.C. the accused was ordered to pay Rs.10,000/- as compensation to the complainant. This was so done vide judgment dated 13.11.2010.

Feeling aggrieved, the accused had preferred an appeal to Court of Sessions and Additional Sessions Judge, Ludhiana, vide her judgment dated 2.7.2014, accepted the same and set aside the impugned judgment, resultantly, acquitting the accused of the charge framed against him.

The complainant felt dissatisfied with the said judgment passed by the Additional Sessions Judge and has approached this Court by way of filing the revision petition, notice of which was given to the respondent, who initially put in appearance through counsel, who subsequently absented.

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

Challenge in this revision petition is to the judgment passed by the Additional Sessions Judge, Ludhiana. The reasoning given by the Additional Sessions Judge, for arriving at the conclusion is contained in para No. 13 and 14 of the judgment. For ready reference, the same is reproduced hereunder:-

> " 13. I have considered the respective contentions of both the learned counsel for the parties and perused the file carefully. In the present case, it is admitted fact that a cheque amounting Rs. Three lacs has been given by the appellant to the rspondent in lieu of consideration i.e. to get the property transferred in the name of the appellant. Appellant alleged that cheque was given in a compromise dated 18.6.2004 which is on the file. Perusal of the file shows that there was a civil litigation between Swaran Kaur and the present appellant. Plaint of that suit is on the file, according to which Swaran Kaur and others filed a suit for separate possession by way of partition of house bearing No. B-XIV-1159, Islam Ganj, Ludhiana. In this civil suit compromise between the parties had been effected which is dated 20.2.2002, according to which Swaran Kaur etc. has to withdraw their suit and admitted the claim

of the present appellant over the property. This fact is very much admitted that compromise in the civil suit was effected. In terms of this compromise Swaran Kaur and others have to withdraw their suit, but Swaran Kaur and other did not withdraw their suit, rather suit had been dismissed in default under Order 9 Rule 8 CPC on 22.3.2006 and copy of the order is also on the file. During the pendency of this civil suit, an application has been filed by one of the co-plaintiff Charanjit Singh against the present appellant Manjit Singh for the registration of the case under Section 420/467/468/471/120-B IPC. That application is also on the file and this application has been received in the Police Station on 31.5.2004 which is on the file as Exhibit D1. This fact has been admitted by PW2 Swaran Kaur. During the pendency of this application again compromise was effected between the parties and this fact is admitted by PW2. PW2 in her cross examination stated that the application has been moved by Charanjit Singh against Manjit Singh before the police and in that every application compromise was effected and she has seen that application which has been brought by HC Beant Singh and application is Ex.D1 and statement of Charanjit

Singh is Ex.D2. Charanjit Singh had made a statement before the police that he has effected compromise, so he does not want to pursue an application dated 31.05.2004. Statement of Charanjit Singh has been recorded on 18.06.2004 as per Ex.D2. Compromise between the parties is also dated 18.06.2004 which is on file. Though this compromise has not been exhibited, but this document can be taken into consideration in view of the admissions made by PWl in her cross examination that Charanjit Singh moved an application Ex.Dl against Manjit Singh and in that case compromise has been effected and statement of Charanjit Singh is Ex.D2. Further she admitted that Manjit Singh gave a cheque to her on 18.06.2004 which was for 18.06.2005, meaning thereby the cheque has been given to the respondent after the compromise effected between the parties at the time when the application has been moved by Charanjit Singh against an appellant which is dated 31.05.2004 Ex.Dl. When the compromise was effected between the parties in civil suit in the year 2002, no such cheque was ever given to the respondent. So, in these circumstances even if compromise dated 18.06.2014 is not exhibited, but it can be taken into account.

14. Compromise dated 18.06.2004 contains the terms and conditions for the presentation of cheque. As per this compromise dated 18.06.2004 appellant Manjit Singh gave a cheque No.052220 amounting Rs. Three Lacs from his account No.11439 State Bank of Patiala. Admittedly, as per the evidence of PW2 cheque was given on 18.06.2004 and it is further mentioned that cheque has been given for 18.06.2005 and this fact is very much admitted by PW2 the complainant and it is further mentioned in the compromise that in case Manjit Singh failed to sell the house, the limitation of the cheque would be extended for another one year and cheque should not be presented in the bank, meaning thereby cheque which has been issued on 18.06.2004 was to be presented on 18.06.2005 and in case the appellant failed to sell the house to pay an amount of Rs.Three Lacs, period of another one year was to be extended for the presentation of the cheque. Whereas the cheque has been presented by respondent on 11.07.2005 i.e. against the terms and conditions of compromise dated 18.06.2004. No evidence has been led by the complainant/respondent that Manjit Singh appellant was able to sell the house

to make the payment of Rs.Three Lacs. So, as per terms and conditions of compromise if perused carefully cheque was given as security to the respondent, because it is very well mentioned that cheque is to be presented if appellant Manjit Singh is able to sell the house. Learned lower Court has failed to consider the above mentioned circumstances. So, in these circumstances the arguments advanced by the learned counsel for the appellant are having merits.

14. As a result of the above discussion, the appeal is accepted. The appellant is acquitted of the notice served upon him. Copy of judgment be placed on the record of learned lower Court. Lower Court record be returned. Appeal file be consigned to the record room."

After hearing the learned counsel for the petitioner, I find that there is no illegality or infirmity with the impugned judgment passed by the Additional Sessions Judge, Ludhiana, which might have called for interference by this Court, while exercising revisional jurisdiction. It is well settled that revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge or that the conclusion arrived at by the Courts below is perverse. This is not a case here. The judgment passed by the Additional Sessions Judge is well reasoned one, based upon proper appraisal and appreciation of evidence. It cannot be said to have been passed in violation of settled principles of criminal jurisprudence, rather the revision petition is found to be without any merit and is dismissed accordingly.

(H.S. Madaan)
Judge

28.11.2017
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No