

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 3906-2016 (O&M)
Date of decision: 28.09.2017

Saraj Singh @ Bittu Diary Wala

.....Petitioner

versus

Kewal Krishan

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Bikramjeet Singh Jatna, Advocate for the petitioner
Mr.Munish Bansal, Advocate for the respondent

- 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?*

Kuldip Singh, J.

This revision is against the concurrent findings of two Courts below, whereby the petitioner was convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.2,000/-, in default thereof, further Rigorous Imprisonment for one month vide judgment of conviction and order of sentence dated 26.5.2015 passed by learned Judicial Magistrate First Class, Malout. Appeal against the same was dismissed by learned Additional Sessions Judge, Sri Muktsar Sahib vide judgment dated 16.9.2016.

Kewal Krishan complainant filed a criminal complaint, in which it is stated that in the discharge of the part liability, towards him, the accused had issued a cheque No.150774 dated 20.4.2010 amounting to

Rs.1,40,000/- drawn on Punjab and Sind Bank, Malout with the assurance that the cheque will be encashed. However, on presentation, the cheque was dishonoured by the drawee bank with the remarks “insufficient funds”. After issuing a legal notice, the complaint was filed. During trial, the complainant himself appeared in the witness box as PW1 and also produced the bank record. Accused in the statement recorded under Section 313 Cr.P.C., took the following stand:-

“I am innocent. I have purchased the bricks amounting to Rs.40,000/- from the complainant in lieu of this amount I have issued the cheque in question to the complainant, but, the same was amounting to Rs.40,000/- and later on the complainant by alteration the same and made the amount as Rs.1,40,000/- by prefixing digit 1. Digit 1 is different from the already written digits. I have filled in the amount of Rs.40,000/- in figures i.e. Rs.Forty Thousand.”

In defence, accused examined one Jeet Singh as DW1 and Handwriting and Finger Print Expert Anil Kumar Gupta (DW2) and closed the defence evidence. Learned Judicial Magistrate First Class, Malout vide judgment of conviction and order of sentence dated 26.5.2015, convicted and sentenced accused as aforesaid. His appeal was dismissed by learned Additional Sessions Judge, Sri Muktsar Sahib vide judgment dated 16.9.2016.

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

Learned counsel for the petitioner has vehemently argued that both the Courts below have failed to properly appreciate the evidence in the right perspective. It is contended that it was ignored that in the digits, before Rs.40,000/-, digit '1' has been added to make it Rs.1,40,000/-. This has been proved from the report of Shri Anil Kumar Gupta, Handwriting

and Finger Prints Expert, who appeared as DW2.

In addition to the going through the report of the Handwriting and Finger Prints Expert, I have myself gone through the disputed cheque. A perusal of the cheque shows that the date on the cheque is with a different ink. The name of the drawee complainant and the amount mentioned in the words is with the same handwriting. The signatures of the accused are in the same ink which was used for filling the date on the cheque. It is clear to the naked eyes that before the digits 40,000/-, digit '1' has been added with a slightly different ink. There was no reason for the lower Court to discard the opinion of the expert, particularly, when the said addition is visible to the naked eyes. In this case, there was no requirement to take the specimen handwriting of anybody, since the addition is of one stroke which is not comparable by taking specimen handwriting of anybody. The reasoning given by Shri Anil Kumar Gupta, Handwriting and Finger Prints Expert is quite convincing. Therefore, it has to be held that before digits 40,000/-, in the amount box of the cheque, digit '1' was added later on.

In statement recorded under Section 313 Cr.P.C., the petitioner had taken the stand that he had purchased the bricks amounting to Rs.40,000/- from the complainant and in lieu thereof, he had issued a cheque amounting to Rs.40,000/-, in which digit '1' was pre-fixed to make it Rs.1,40,000/-. Therefore, it cannot be said that accused had not taken the said defence. The trial Court had laid the great emphasis on the fact that the accused had made the statement on 28.7.2014 that he has compromised the matter with the complainant and he should be given one month's time to make the payment. In this case, it is never stated by the accused that he owe Rs.1,40,000/- to the complainant. He admitted the liability in his statement

recorded under Section 313 Cr.P.C. only to the extent of Rs.40,000/- and the said statement dated 28.7.2014 does not show that the accused agreed to pay a sum of Rs.1,40,000/- as claimed in the complaint. Therefore, the said statement cannot be read to make him liable under Section 138 of Negotiable Instruments Act, 1881. Once, material alteration in the cheque is found, the cheque becomes worthless on account of forgery and no liability under Section 138 of Negotiable Instruments Act, 1881 arises. Two Single Benches of this Court have taken a similar view in Om Parkash vs. Subhash Chand, 2013 (1) R.C.R. (Civil) 609 and Pardeep Kumar Mahajan vs. Ashwani Mehta, 2015(1) R.C.R. (Criminal) 704.

Learned counsel for the petitioner has further argued that the petitioner was working with the brick kiln and was earning Rs.5,000/- per month only. Therefore, he had no capacity to pay Rs.1,40,000/-. However, in view of the findings recorded above regarding material alteration in the cheque, the said contention need not to be discussed in detail.

In view of the foregoing discussion, I am of the view that the complainant could not prove his case beyond all reasonable doubts. Accordingly, the revision is accepted. Judgment of conviction and order of sentence passed by learned Judicial Magistrate First Class, Malout dated 26.5.2015 and the judgment passed by learned Additional Sessions Judge, Sri Muktsar Sahib dated 6.9.2016 are hereby set aside. The petitioner stands acquitted of the notice of accusation served upon him. His bail bonds and surety bonds are discharged.

28.09.2017

gk

(Kuldip Singh)
JudgeWhether speaking/ reasoned:
Whether Reportable:Yes
Yes