IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 827 of 2016 (O&M)
Date of Decision: 07.09.2017

SUBHASH CHAND ***… Petitioner***

VS.

STATE OF HARYANA AND ANOTHER ***...Respondents***

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Raghav Sharma, Advocate,
for the revisionist.

Mr. Pawan Garg, AAG, Haryana.

Mr. Ravi Kumar Saini, Advocate,
for the complainant-respondent No. 2.

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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. (Oral)

Impugned in the present revision is the judgment dated 15.12.2015 passed by learned Additional Sessions Judge, Kurkshetra, affirming the judgment of conviction dated 08.11.2012 and order of sentence dated 09.11.2012 passed by learned Special Judicial Magistrate Kurukshetra, vide which the accused-petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for one year and to pay compensation to the tune of ₹ 11,00,000/-.

As per the averments made in the complaint, complainant-respondent No. 2 had advanced ₹10.00 lakhs in cash to the accused-petitioner in June 2011. It is claimed that in order to discharge the said legal liability, accused-petitioner issued a cheque bearing No. 980549 dated 12.03.2012 amounting to ₹ 10.00 Lakhs drawn at State Bank of India, Thanesar, Kurukshetra. The said cheque was dishonoured, when presented. After issuing legal notice, complaint was filed.

I have heard the learned counsel for both the parties and have carefully gone through the case file.

It appears that both the Courts below have failed to appreciate the evidence in the right perspective. The cross-examination of Rajender Kumar, complainant-respondent No. 2 shows that he owns a commission agent firm namely Sethi Traders in which he is the sole proprietor. His cross-examination further reveals that accused-petitioner was the customer of the said firm of the complainant-respondent No. 2. On one occasion, money was paid in advance by the accused and the receipt Ex. D-1 shows that the same was issued by the Clerk of the complainant-respondent No. 2 firm.

In the present case, admittedly when huge amount of ₹10.00 Lakhs was advanced, no writing on the *Bahi* or separate writing was obtained by the complainant-respondent No. 2, who happens to be the commission agent, particularly when the accused-petitioner was only his customer. It is not alleged by the complainant-respondent No. 2 that accused-petitioner was very close to complainant-respondent No. 2 and therefore, in their mutual relations they have never obtained any writings from each other regarding the said loan.

It being so, the plea of the accused-petitioner that the security cheques issued by the accused-petitioner has been misused, is liable to be accepted. In this case, this Court is not satisfied that loan of ₹10.00 Lakhs, as claimed by the complainant-respondent No. 2, was advanced by the complainant-respondent No. 2 to his customer/accused-petitioner, without obtaining any receipt or documents. Therefore, the cheques (Ex. C-1) cannot be stated to have been issued in discharge of legal liability of the said loan.

In view of the foregoing discussion, the findings recorded by the both the Courts below are hereby set aside and the accused-petitioner is acquitted of notice of accusation served upon him.

Since, the accused-petitioner is already on bail, his bail bonds/surety bonds be discharged.

September 7, 2017 **[KULDIP SINGH]**
Suresh Kumar **JUDGE**

Whether speaking / reasoned	**:**	***Yes*** ✓	/	***No***
Whether Reportable	**:**	***Yes***	/	***No*** ✓