IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRR No.849 of 2016 (O&M)
Date of decision : November 21, 2017

Mukesh Kumar .... Petitioner

Versus

Bir Singh .... Respondent

2. CRR No.2017 of 2016 (O&M)
Date of decision : November 21, 2017

Bir Singh .... Petitioner

Versus

Mukesh Kumar .... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arihant Jain, Advocate for the petitioner in CRR No.849 of 2016 and for the respondent in CRR No.2017 of 2016.

Mr. S.S. Patter, Advocate for the petitioner in CRR No.2017 of 2016 and for the respondent in CRR No.849 of 2016.

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

<u>KULDIP SINGH J. (ORAL)</u>

By this common judgment, I shall dispose of two connected cases i.e. CRR No.849 and 2017 of 2016, arising out the same judgments passed by both the courts below.

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Brief facts of the case are that according to the complainant, who happens to be Income Tax and Sales Tax Practitioner, he advanced a loan of ₹15,00,000/- to the accused-petitioner on 02.07.2010. In discharge of said liability, the accused-petitioner issued a cheque bearing No.034212, dated 04.03.2012, dated 04.03.2012 for ₹15,00,000/- drawn Axis Bank Branch, Palwal. The said cheque on presentation was dishonoured due to insufficient funds. After issuing the requisite notice, a complaint under Section 138 of the Negotiable Instruments Act, 1881, was filed.

After recording preliminary evidence, the accused-petitioner was summoned. The petitioner in addition to his own statement, examined Saurab Gupta as CW1, Akash Sharma as CW2, Vineet Kumar as CW3 and placed some documents. To defend himself, the accused-petitioner examined himself as DW1 and also examined Parveen Kumar as DW2.

After hearing learned counsel for the parties and going through the evidence, learned Judicial Magistrate 1st Class, Palwal, vide judgment of conviction and order of sentence dated 09.02.2015, convicted the accused-petitioner for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo simple imprisonment for one year and also awarded ₹15,00,000/- as compensation, in default of payment of compensation, the accused-petitioner was directed to undergo further simple imprisonment for four months.

In appeal filed by the accused-petitioner, learned Addl. Sessions Judge, Palwal, vide judgment dated 20.02.2016 while maintaining the the conviction of the accused-petitioner, reduced the substantive sentence from simple imprisonment for one year to simple imprisonment for

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six months. However, the compensation amount was maintained.

Against the said order, the accused-petitioner has filed CRR No.849 of 2016, challenging his conviction, whereas the complainant has filed CRR No.2017 of 2016, for setting aside the judgment dated 20.02.2016 passed by learned Addl. Sessions Judge, Palwal, regarding reduction in the sentence and restoring the order of sentence dated 09.02.2015 passed by the learned Judicial Magistrate 1st Class, Palwal.

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

A careful scrutiny of the facts and evidence shows that as per the case of the complainant, he had advanced ₹15,00,000/- to the accused-petitioner on 02.07.2010 and that accused-petitioner had issued cheque bearing No.034212, dated 04.03.2012 drawn on his account. The said loan was stated to be advanced as a friendly loan. The complainant has admitted in his cross-examination that he is an Income Tax Practitioner. He took admission in LL.B. in the year 2005 and after completion his LL.B., he got licence in the year 2008. Thereafter, he started practicing as an Assistant with Mr. R.P. Goyal, Advocate, who used to pay him ₹5,000/- to ₹6,000/- per month. The friendly loan was stated to be advanced on 02.07.2010 i.e. nearly after two years he started to practice as an Assistant under a senior advocate. He belongs to a modest family. It has also come out from his cross-examination that he had been submitting his income tax return since the year 2003. He also used to file income tax return on behalf of the accused-petitioner also. He filed such income tax returns for three years. The accused-petitioner was having licence from Sorout Tractor. The

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accused-petitioner had formed a partnership firm. The said partnership deed was got prepared from the complainant. One trust deed was also got prepared by the accused-petitioner from the complainant. The complainant has also admitted that there were no other dealings between the parties. He used to charge professional fees in cash from the accused-petitioner. He never maintained accounts of his payments. He also claimed that he had sold a flat on 13.06.2010 and had also withdrawn ₹5,00,000/- on 15.06.2010. When he was further cross-examined, he admitted that the amount of ₹15,00,000/- in words and figures on the cheque was filled in by him and the date i.e. 04.03.2012 was also filled in by him. He also disclosed that the cheque was given earlier to him by the accused-petitioner, stating that whenever he would have the payments, the complainant should fill in the same. There is a difference of 10-15 days in giving cheque and filling in the blank cheque. He also admitted that the income tax returns of accused-petitioner for the year 2009-10 and 2010-11 were filed by him, which are Exs. D-1 and D-2. He further admitted that on 04.03.2012, the accused-petitioner did not give him any cheque. He also stated that nobody was present when he advanced the loan to the accused-petitioner.

From the cross-examination of the complainant, it is clear that there was fiduciary relationship between the parties. The complainant, who happens to be income tax practitioner used to file the income tax return and the payable tax was taken by him from the accused-petitioner. The case of the accused-petitioner is that the blank cheque was given for payment of the tax and that same was filled in by the accused-petitioner. The case of the complainant is that the loan was advanced on 02.07.2010 and the cheque

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dated 04.03.2012 for ₹15,00,000/- was given. It is nowhere stated that a blank cheque was given earlier and it was filled in 10-15 days later. If loan of ₹15,00,000/- was advanced, there was no reason why the accused-petitioner did not fill in the amount in words and figures and why the date was not also filled in by him. At the most, if the accused told the complainant that he should present the cheque whenever he received payment, he would have at least filled in amount in words and figures in his handwriting, so that the complainant is not in a position to fill in any higher or different amount. Therefore, it is clear that the cheque was not given on 04.03.2012 for ₹15,00,000/- as claimed in the complaint, rather it was a blank cheque in which the amount in words and figures as well as date was filled in by the complainant in his own handwriting. It falsifies the claim of the complainant that the cheque was handed over to him on 04.03.2012.

The complainant had fiduciary relationship with the accused-petitioner. Therefore, heavy burden was on the complainant to prove that he had advanced the loan and that blank cheque for the same was given to him. The complainant is an income tax practitioner and he knows that whenever loan is advanced to anybody, receipt has to be obtained and that such heavy amount is to be advanced only through a cheque or demand draft or RTGS. The accused-petitioner was the client of the complainant and they were having professional relationship. The accused-petitioner was no so thick and thin with the complainant. There is no reason why the complainant, who is an income tax practitioner, will advance such a heavy loan to his client without any close relationship and without obtaining any writing to this effect. There was heavy burden on the complainant. In such circumstances,

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the accused-petitioner is successful in raising reasonable doubts that the complainant might have misused one of the blank cheques given to him for payment of income tax for depositing the same in the Treasury.

In order to support his case, the accused-petitioner took a risk by stepping himself into the witness box and offered himself for cross-examination. He asserted in his cross-examination that the tax return was deposited in cash and the complainant used to take cash from him. His version was also supported by one Parveen Kumar, DW2.

From the abovenoted discussions, it is clear that the parties were in fiduciary relationship and heavy burden was on the complainant to prove that he had advanced a loan of ₹15,00,000/- to his client without obtaining any writing and that he has not misused any blank cheque of his client. Such loan was not shown in the income tax return of the complainant.

For the reasons mentioned above, the case of the complainant becomes highly doubtful and is not beyond all reasonable doubts. Therefore, no presumption under Section 138 of the Negotiable Instruments Act, 1881 can be raised. Both the courts below erred in holding the accused-petitioner guilty for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

In view of the foregoing discussions, CRR No.849 of 2016 is allowed and CRR No.2017 of 2016 is dismissed. The accused-petitioner stands acquitted of the notice of accusation served upon him. As such, the judgment dated 20.02.2016 passed by learned Addl. Sessions Judge, Palwal and the judgment of conviction and order of sentence dated 09.02.2015

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passed by learned Judicial Magistrate 1st Class, Palwal, are hereby set aside.

The bail bonds and surety bonds of the petitioner stand discharged.

(KULDIP SINGH)
JUDGE

November 21, 2017
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Whether speaking / reasoned Yes

Whether Reportable: Yes

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