

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 3753 of 2017 (O&M)

Date of decision : 14.3.2018

...

Amarjit Singh

.....Petitioner

vs.

Gurdev Singh and another

.....Respondents

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

Present: Mr. Hardeep Singh, Advocate
for the petitioner

Ms. Harmanpreet Kaur (Simmi), Advocate
for respondent No.1.

Mr. Saurav Khurana, DAG, Punjab, for respondent No.2.

...

H. S. Madaan, J.

Complainant – Gurdev Singh had brought a complaint under Section 138 of the Negotiable Instruments Act against accused Amarjit Singh on the allegations that on 7.2.2011, accused had entered into an agreement to sell his land measuring 46 Bighas 14 Biswas situated at village Ramgarh Channa, Tehsil Nabha, District Patiala, alongwith electric motor connection with complainant Gurdev Singh and his brother Devinder Singh at the rate of Rs. 22,50,000/- per acre, receiving Rs. 60 lacs as earnest money. The

final date for execution and registration of the sale deed was fixed as 25.5.2011. However, such date was extended many a times i.e. from 25.5.2011 to 13.9.2011 and then from 25.11.2011 to 23.4.2012. The accused had further received a sum of Rs. 4,00,000/- from the complainant vide cheque No. 010292 dated 23.3.2012, while extending the date to 25.6.2012, receiving another amount of Rs. 6,00,000/- vide cheque No. 010352 on 11.6.2012, while extending the date to 10.7.2012 etc. He had received Rs.10 lacs in between extending the date to 5.10.2012. Ultimately granting further extensions, the date had been extended to 25.5.2013, vide agreement dated 5.5.2013. The accused had given a cheque of Rs.1,20,00,000/- to ensure the return of double the amount by the accused to the complainant. Complainant Gurdev Singh and Amarjit Singh executed affidavits to ensure the execution till 15.8.2013. Sometimes accused offered to return double of the earnest money and sometimes to execute the sale deed. Thereafter, the cheque in question was given by the accused in the sum of Rs.15,00,000/- to the complainant on 22.8.2013, on account of return of part of total earnest money. However, on presentation, the cheque was returned uncashed due to insufficiency of funds in the account of the accused. On getting information in that regard vide bank memo dated 12.9.2013, the complainant got served the statutory legal notice upon the accused, calling upon him to make payment of the cheque amount within 15 days of receipt of notice, but the accused failed to do so, as such the complaint was filed.

After recording of the preliminary evidence, the accused

was summoned. He put in appearance. Notice of accusation for an offence under Section 138 of the Negotiable Instruments Act, was served upon him, to which he pleaded not guilty and claimed trial. The complainant adduced the evidence. Thereafter statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him, but he denied the same contending that he has not borrowed any amount from the complainant, that the cheque was misused by the complainant; that there was no legal liability of the complainant against the present cheque. The accused did not lead any evidence in defence.

After hearing arguments, the trial Magistrate convicted the accused for an offence under Section 138 of the Negotiable Instruments Act, vide judgment dated 29.10.2015 and in terms of order of the even date sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs.4,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of 15 days.

The accused – convict feeling aggrieved by the said judgment of his conviction and order of sentence, preferred an appeal in the Court of Sessions, which was assigned to Additional Sessions Judge, Mohali, who vide judgment dated 6.9.2017 dismissed the appeal.

Accordingly the accused – convict has preferred the present revision petition, notice of which was given to the respondents who have put in appearance.

I have heard, learned counsel for the petitioner, learned counsel for the complainant, besides going through the record and I find that judgments of conviction and sentence passed by the courts below against the revisionist-convict are not sustainable and are bound for setting aside by way of acceptance of revision petition.

For sustaining conviction under Section 138 of the Negotiable Instruments Act, the complainant must establish that the cheque in question had been given by the accused to the complainant on account of discharge of a financial liability, otherwise the essential ingredients of the offence do not get completed.

In the instant case the complainant has miserably failed to prove that the cheque issued by the accused in favour of the complainant was on account of discharge of a financial liability. A bare perusal of allegations in the complaint goes to show that complainant had alleged that he alongwith his brother Devinder Singh had entered into an agreement to purchase the landed property with Amarjit Singh paying him consideration amount in parts on various occasions and date for execution and registration of the sale deed stood extended from time to time. The cheque in the sum of Rs.1,20,00,000/- was given by the accused to the complainant to assure return of double the amount. That cheque is dated 5.5.2013. He has also said to have executed an affidavit to get the sale deed executed till 15.8.2013. Thus obviously the cheque had been issued as a security to ensure execution of the sale deed and on that date the accused did not have any financial liability to discharge towards the complainant, rather the complainant was required to pay money to

him towards balance consideration amount for getting the sale deed executed. The allegations in the complaint go to show as if the complainant is aggrieved by the accused not coming forward to execute the sale deed and seeks specific performance of the agreement to sell. As per those allegations, the accused had offered to return double of the earnest money and in order to re-pay the said sum had issued a cheque in the sum of Rs.15 lacs dated 22.8.2013 as part payment. Interestingly, the cheque is stated to have been dishonoured and intimation given to the complainant by the bank vide memo dated 12.9.2013, he craves to have served legal notice dated 24.9.2013 upon the accused and that within 15 days no response was received, he filed the complaint in the court of law. Quite interestingly the complainant alongwith his brother Devinder Singh had availed of civil remedy by filing a suit for possession by way of specific performance of the agreement to sell dated 7.2.2011, which in terms of the certified copy of the judgment dated 5.12.2016 passed by the Civil Judge Senior Division, Nabha, available on the file, had been instituted on 6.2.2014. A perusal of that judgment goes to show that the plaintiffs had craved for specific performance of the agreement to sell making similar averments as in the complaint with regard to payment of consideration amount in part by them, from time to time. There is mention of the defendant showing his inability to get the sale deed registered due to domestic problem and agreeing to return the double the amount by issuing cheque of Rs.1,20,00,000/- dated 5.5.2013 as security and had given an assurance to get the sale deed registered in favour of the plaintiff. It seems that the complainant has

been blowing hot and cold in the same breath. On the one hand presenting the cheque said to have been issued by the accused to the complainant on account of return of double the earnest money in part, thereby showing that the transaction could not mature due to reluctance of defendant to execute the sale deed and then filing a suit of specific performance on the basis of agreement. If the complainant had accepted the cheque in the sum of Rs.15 lacs issued by the accused in his favour towards return of double the earnest money, in part, then he was certainly estopped from bringing a suit for specific performance. The complainant is gainer in both the ways, getting the accused convicted in a complaint under Section 138 of the Negotiable Instruments Act and having his suit for specific performance decreed. The essential ingredients for specific performance of the agreement were clearly lacking. The complainant alongwith his brother having such specific performance of agreement to sell, the complainant could not have accepted return of part of any amount paid to him.

The courts below have clearly lost sight of this fact and by mis-appraisal of evidence and wrong interpretation of law concluded that ingredients of offence under Section 138 of the Negotiable Instruments Act and sentenced the accused, which wrong is required to be undone by way of acceptance of the revision petition.

Therefore, the revision petition is accepted, the impugned judgments passed by the Courts below are set aside and the petitioner is acquitted of the notice of accusation served upon him.

Petitioner Amarjit Singh is stated to be in jail in this

case. So, he is ordered to be released immediately, if his custody is not required in connection with any other case.

14.3.2018
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No