IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 4344 of 2017 (O&M)
Date of decision : 24.4.2018

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Vijay Kumar ....Petitioner

vs.

State of Haryana and another
.................Respondents

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

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

Mr. Rajesh Lamba, Advocate for respondent No.2.

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H. S. Madaan, J.

Complainant Dinesh had filed a complaint under Section 138 of the Negotiable Instruments Act against accused Vijay Kumar, on the allegations that the complainant had advanced a sum of Rs. 4 lacs to the accused as a friendly loan on 3.1.2015 for a period of 8 months. The complainant had advanced the said amount through NEFT from his bank account of Oriental Bank of Commerce. Later on as per repeated requests of the complainant, accused issued two cheques bearing No. 767515 dated 1.9.2015 and No. 767514 dated 3.8.2015 in the sum of Rs. 2 lacs each, both drawn on ICICI Bank, Sector 16, Faridabad, in favour of the complainant. However, on presentation, both the cheques were returned un-paid due to insufficiency of funds in the account of the accused and complainant was informed in that regard vide bank return memos dated 1.9.2015 and 27.8.2015. thereafter, complainant got served legal notice dated 25.9.2015 upon the accused sent as per registered AD post, but accused did not make any payment within the stipulated period, as such the complainant filed a complaint in the Court of law.

After recording of preliminary evidence, the accused was summoned to face trial. He accordingly, put in appearance and was admitted to bail. Notice of accusation under Section 138 of the Negotiable Instruments Act, was served upon the accused, to which he pleaded not guilty and claimed trial. During the course of his evidence, the complainant got his own statement recorded as CW-1, reiterating on oath his version as given in the complaint, proving the copy of bank pass-book of the complainant as Exhibit C-1, cheques in question as Exhibits C-2 and C-3, cheque return memos as Exhibits C-4 and C-5, legal notice dated 25.9.2015 as Exhibit C-6 and postal receipt as Exhibit C-7.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, but he denied the allegations contending that he had issued blank signed cheques to the complainant as security. He denied having received any legal notice. During his defence evidence, the accused examined Hamid Hussain, as DW-1.

After hearing the arguments, the trial Court vide its judgment dated 23.5.2017 convicted the accused for an offence under Section 138 of the Negotiable Instruments Act and vide order dated 26.5.2017 sentenced him to undergo simple imprisonment for a period of six months, besides directing him to pay compensation to the tune of Rs.6,00,000/- within a period of two months from the passing of the judgment, clarifying that the compensation amount if not paid in time shall be recoverable under the provisions of Section 421 Cr.P.C.

Feeling aggrieved, by the said judgment of his conviction and sentence, the accused preferred an appeal before the Court of Sessions, who vide judgment dated 17.11.2017 dismissed the same and the accused was taken into custody. Still feeling dissatisfied, he has filed the present revision petition before this Court, notice of which was given to the respondent complainant, who has put in appearance.

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

It is well settled that scope of 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. This is not the case here. In the instant case, I do not find any illegality or infirmity with the impugned orders apparent on the face of the same, which might have called for interference by this Court, while exercising revisional jurisdiction. The impugned judgments are certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. There are no defects apparent on the face of such judgments. They are based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Under Section 118 of the Negotiable Instruments Act, there are certain presumptions, which are though rebuttable. One of such presumption relate to consideration i.e. to the effect that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration and then that the holder of a negotiable instrument is a holder in due course. Under Section 139 of that Act, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

The accused has failed to rebut that presumption. The amount of Rs. 5 lacs advanced by the complainant to the accused had been withdrawn by him from his bank account. It also stood proved on the record that the cheques on being presented by the complainant, were received back un-cashed due to insufficiency of funds in account of the accused and accused had failed to make payment of cheque amount within 15 days of receipt of the notice.

With regard to postal receipts, the presumption under Section 114 of the Indian Evidence Act, that the common course of business had been followed in that case. It means that notice was received by the noticee unless it could be shown that the address in the notice was wrong. The case of the accused is that he had given the cheques as a security, that means he admits issuance of cheques under his signatures from his bank account. He has failed to prove his defence in that regard.

Learned counsel for the petitioner has raised the point that petitioner has been convicted in a time barred case, in as much as, according to the case of the complainant, the cheques when presented were received back un-cashed due to insufficiency of funds in the account of the accused. Thereafter on being intimated, the complainant had served a legal notice upon the accused. Since the accused failed to make the payment of cheques amount within 15 days of receipt of notice, compliant was filed. According to him it has not been filed within time and is time barred. But then a perusal of the file goes to show that this objection was not taken either in the trial Court or in the Appellate Court. Furthermore, in terms of proviso to Section 142 of the Negotiable Instruments Act, the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. It means, cognizance can be taken by the court of competent jurisdiction even after the prescribed period, though that is subject to the satisfaction of the Court. The very fact that this issue was not raised by the accused at any stage and the Court of Magistrate had entertained the complaint and disposed that off after the trial and the Appellate Court did not find any such legal lacuna, no such type of objection can be allowed to be taken in revision at a highly belated stage.

Further more, in terms of Section 142 of the Negotiable Instruments Act, the complaint is to be filed within one months of the date on which the cause of action arises to the complainant. As per clause (c) of provisions of Section 138 of the Negotiable Instruments Act, ifthe drawer of such cheque fails to make the payment of the said amount of money to the payee within fifteen days of the receipt of the notice.

Now the crucial date is the date of receipt of notice and not the date on which the notice is issued or dispatched. This argument of learned counsel for the revision-petitioner is based upon assumptions and surmises. There is no evidence to show as to on which date the notice had been received by the accused, rather accused denied having received the notice. Then how can he say that complaint had not been filed within time.

Learned counsel for the revisionist has referred to the following authorities :-

1. ***N. Harihara Krishnan vs. J. Thomas 2017 (4) RCR (Criminal) 41***;
2. ***Kamlesh Kumar vs. State of Bihar and another 2014 (1) RCR (Criminal) 332***;
3. ***Shyam Pal vs. Dayawati Besoya and another 2016 (4) RCR (Criminal) 790***;
4. ***Mansukhbhai Badhabhai Boricha vs. State of Gujarat 2012(18) RCR (Criminal) 749***;
5. ***K.S. Gupta Enterprises vs. Ashok Shaligram Gupta and others 2015 (34) RCR (Criminal) 637;***

6. ***Kamal Singh vs. Mukesh Sharma and others 2015 (3) RCR (Criminal) 151***;
7. ***Joginder Bajaj vs. Pankaj Sharma 2013 (8) RCR (Criminal) 2989;*** and
8. ***Devender Singh vs. Avtar Singh 2016 (3) RCR (Criminal) 611***

But those are not applicable due to different facts and circumstances of the case and the context in which such observations have been made. The complainant had successfully proved the necessary ingredients of offence under Section 138 of the Negotiable Instruments Act, proving its case against the accused conclusively and affirmatively. The trial Magistrate was justified in convicting the accused for the said offence. The Appellate Court had correctly dismissed the appeal and upheld the judgment passed by the trial Magistrate.

Finding no merit in the revision petition, the same stands dismissed.

(H.S. Madaan)
Judge

24.4.2018
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No