IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

125

CRR-229-2018 &
CRM-2237-2018

Date of decision:25.04.2018

Sunil Sharma ...*PETITIONER*

Vs.

State of Haryana and another ...*RESPONDENTS*

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Manoj Kaushik, Advocate,
for the petitioner.

***

AUGUSTINE GEORGE MASIH, J.

This revision petition has been preferred challenging the order dated 05.01.2018 passed by the learned Additional Sessions Judge, Charkhi Dadri, whereby the appeal preferred by the petitioner against the judgment and conviction order passed by the learned Judicial Magistrate Ist Class, Charkhi Dadri, Bhiwani dated 15.07.2014 wherein complaint under Section 138 of the Negotiable Instruments Act, 1881 preferred by the respondent-Sh. Bhagwan was allowed holding the petitioner guilty of having committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to rigorous imprisonment for a period of six months and payment of compensation to the respondent-complaint of ₹30 lacs within a period of one month from the date of the order, in default whereof, to undergo further rigorous imprisonment for a period of one month, stands dismissed.

On a contention raised by the learned counsel for the petitioner that an application for leading additional evidence, which was preferred by the petitioner before the Appellate Court, has not been considered and decided by the said Court whereas the main appeal stands decided without considering the said application, records of the Courts below were summoned, on perusal whereof, the said contention of the learned counsel for the petitioner has been found to be false and on this ground itself, the revision petition deserved dismissal. However, at the request made by the counsel for the petitioner, the case has been heard on merits as well.

It is the contention of the learned counsel for the petitioner that the Courts below have not properly appreciated the evidence, which has been brought on record. He contends that the petitioner had taken a specific stand before the Courts below that his cheque book has been stolen, for which he has complained with the Police Station Kirti Nagar, Delhi, one of these stolen cheque has been misused by the complainant by forging his signatures and incorporating the amount therein for initiating proceedings under Section 138 of the Negotiable Instruments Act. He further contends that the complainant and the petitioner had never met nor have they ever any telephonic conversation with each other, in support of this contention, he has referred to the observations of the Courts below that on the first date of appearance, petitioner was not recognized by the complainant and pointed to some other person, who was standing in place of the petitioner as an accused. He, thus, contends that the claim of the complainant that he had advanced loan to the petitioner cannot sustain. He contends that the complainant has failed to prove any legally enforceable debt or liability as no documentary evidence or proof was produced to prove such liability rather he has, while appearing as a witness, admitted that the amount of loan was given by him at the asking of his brother Sri Krishan to the petitioner. The brother of the complainant failed to appear before the trial Court to substantiate this assertion. There being no legally enforceable liability, the present complaint was not maintainable and the impugned order deserves to be set aside. His further submission is that the learned Lower Appellate Court has wrongly proceeded to dismiss the application of the petitioner for leading additional evidence as those documents, which were sought to be placed on record i.e. the proceedings in some other Court, merely on the ground that it was not mentioned as to period of these documents and when the petitioner came to know about them, cannot sustain. He, therefore, prays that the present petition be allowed and the impugned judgment/order passed by the Courts below be set aside.

I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the pleadings, the impugned judgments and order as also the evidence, which has been referred to by the counsel for the petitioner but do not find myself in agreement with him.

The complaint under Section 138 of the Negotiable Instruments Act, 1881 has been preferred by the respondent-complainant on a cheque amounting to ₹20 lacs having been returned by the bank with the observations 'payments stopped' and thereafter, due notice has been served under the Statute but without any response from the petitioner, which aspect stands proved on the basis of the evidence, which has been led by the respondent-complainant by producing CW1 Bhupinder Singh, Officer Scale

-I, Bank of Baroda, Delhi, which is the banker of the petitioner, CW2 Parveen Kumar, Clerk, The Bhiwani Central Co-operative Bank, Charkhi Dadri where cheque was presented for encashment of the amount, CW3 Surender Kumar, Clerk of Sh. Shiv Kumar, Advocate, who has proved the legal notice and CW4, the complainant himself, who proved and substantiated the allegations and the facts in the complaint where he has stated that he met the accused-petitioner at his home in December, 2009 where he advanced an amount of ₹20 lacs to the petitioner at the instructions of his brother Sri Krishan, in lieu of which, he has issued a cheque to him. The amount had come to him after sale of his agricultrual land in 2008-2009. As regards the initial hitch in recognition of the petitioner on appearance in Court, he stated that because of the lapse of time of three years from the date of advancement of the amount, initially he got confused but thereafter, he immediately recognized the accused.

Statement of the petitioner-accused was recorded under Section 313 Cr. P.C. and thereafter, he led his evidence by appearing himself as DW1 and did not lead any other evidence. In his affidavit, apart from denying the averments in the complaint, he had asserted that he had no dealings with the complainant and did not know him rather the cheque book was stolen by Sri Krishan, brother of the complainant, whom he knew and had friendly terms with. He denied having issued the cheque to the complainant nor has he mentioned any amount therein or writing anything on the cheque what to say of signing it. He stated that a conspiracy has been hatched by the complainant and his brother to mount pressure on the petitioner to extort money. He had made a complaint to the Police Station Kirti Nagar, Delhi regarding theft of his cheque book, mobile and camera and had denied any kind of liability to pay amount mentioned in the cheque.

Firstly, dealing with the case of the complainant-respondent, overwhelming evidence has been produced on the basis of which it is proved on record regarding the cheque, which is from the account which belongs to the petitioner, its presentation and dishonour, legal notice through counsel and the receipt of amount of ₹20 lacs by the petitioner and the source of the said amount. Nothing has come out in the cross-examination of the witnesses, which have been extracted to discredit or cause dent on trustworthiness.

Now moving on to the stand of the petitioner, firstly, with regard to the cheque book having been stolen, what has been stated in the affidavit, is that the cheque book has been stolen by the Sri Krishan, brother of the complainant Shri Bhagwan, from his car whereas in the unattested copy of the undated application, which is stated to have been moved to the Police Station Kirti Nagar, it was mentioned that his mobile, cheque book and some other articles were found missing from his car when he returned from his office and that the same were stolen by some unknown persons. These are self contradictory and thus, the story projected by the petitioner is doubtful and appears to be an afterthought. As regards the application stated to have been moved to the Police Station Kirti Nagar, Delhi, the same, as mentioned above, is undated, uncertified copy and without any DDR entry. It has also been admitted that after the submission of the said application, it was not pursued by the petitioner. This stand, therefore, with regard to the theft of the cheque book of the petitioner has rightly been rejected by the Courts below.

The plea of the petitioner that he had not signed or filled the cheque or the amount thereon again is not acceptable as the Court has, on the basis of the signatures and the handwriting of the petitioner available on the judicial record i.e. signatures put by the petitioner on the court fee ticket affixed on his affidavit Ex. DW1/A as well as an application dated 23.04.2014 seeking permission of the Court to plead his case himself without a counsel, which is, admittedly, in his own handwriting, was duly compared by the trial Court and had come to a conclusion that the signatures on the cheque Ex. C1 and the writing on it were of the petitioner. Thus, the plea of the counsel for the petitioner that the handwriting expert should have been called upon to prove the signatures, suffice it to say that the experts are only for the assistance of the Court and their evidence is not conclusive, as has been held in various judgments of the Courts.

That apart, the conduct of the petitioner before the trial Court has also been commented upon by the learned Judicial Magistrate Ist Class, Charkhi Dadri in his judgment dated 15.07.2014, according to which, the petitioner is a very shrewd and cunning person as he has been continuously changing his address as well as his signatures. In the vakalatnama and other documents as also in the order sheets before the Court, he had been putting his signatures in Hindi an it is on one occasion, he had put his signatures on the court fee ticket affixed on his affidavit in English, which has been marked as C2. This shows that he had avoided signing all papers in English intentionally to project that the Cheque Ex. C1, which was dishonoured, has not been signed by him as it has his signatures in English. That apart, he evaded service for almost three years and he kept changing his address continuously, as is apparent in his testimony where he admitted that he had given one address on one page and another on the different page. He also admitted that he got intimation of notice under Section 138 of the Negotiable Instruments Act three years back whereas on appearance, he had stated that he was not aware of the legal proceedings pending against him. The observation of the trial Court, thus, that the petitioner was playing hide and seek even with the Court, cannot be said to be without basis.

The plea of the counsel for the petitioner that the application for leading additional evidence has been wrongly dismissed cannot be accepted as the same is bereft of any details as are mandated under the Statute i.e. the relevance, the period, the documents related to and the date on which he came to know about the documents etc. The application has rightly been dismissed by the appellate Court.

In view of the above, finding no merit in the present petition, the same stands dismissed.

CRM-2237-2018

In view of the dismissal of the main case, this application has been rendered infructuous and the same is disposed of as such.

April 25, 2018 **(AUGUSTINE GEORGE MASIH)**
pj **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No