

\$~2

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 11th September, 2018

+ CRL.M.C. 1516/2015 and Crl.M.A.5565/2015

HARJEET SINGH Petitioner

Through: Mr. Dinesh Garg, Advocate with
petitioner in person.

versus

GURMEET SINGH & ANR. Respondents

Through: Mr. A.K.Dubey, Advocate with
Mr. Jaan Mohd. Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was tried as an accused in complaint case (CC No.146/2004) instituted by the respondent on charge for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on the facts that he had not made any payment pursuant to the notice of demand issued and served in the wake of dishonor of a post-dated cheque bearing No.609496 dated 15.11.2003 of Rs.5,00,000/-, drawn on Central Bank of India, Shahdara, Delhi.

2. The trial court judgment dated 11.07.2012 would show that the petitioner had, *inter alia*, taken the plea that there was no liability or debt due. He had examined one Ranjeet Singh (DW-1) in defence with reference to a receipt Ex.CW1/DA, dated 30.08.2000 indicating

the sale of the bus against consideration of Rs.1,50,000/- and he having received the entire consideration there against. The said witness (DW1), the petitioner (the convict) and the respondent (the complainant) are real brothers.

3. The complaint, the facts whereof have been noted in the judgment dated 11.07.2012, also confirmed that the cheque was issued in the context of the sale of the bus bearing No.DL-1PA-4031 by the complainant in favour of the convict. The said judgment of conviction returned by the trial court is presently under challenge before the first appellate court by Criminal Appeal No.04/2012.

4. In the course of hearing on the said appeal before the court of Sessions, the petitioner had moved an application under Section 311 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for recall of the complainant (PW-1) for further cross-examination. The said application was treated by the appellate court as an application under Section 391 Cr.P.C. The object and purport of the said application essentially was to confront the complainant with another document purporting to be executed by the complainant on 08.09.2000 at the time of sale of the bus and handing over of the cheque in question. As per the said document, the complainant had indicated that there was a loan taken by him against the said bus, the liability for repayment whereof had been undertaken by the petitioner at the time of purchase of the bus and, for this purpose, the cheque had been issued in the sum of Rs.5,00,000/- but kept undated, the cheque to be returned upon repayment of the loan by the petitioner on behalf of the complainant

and, in case the payment of the loan was not made, the complainant was to encash the same for repayment of the loan by him directly.

5. It is the contention of the petitioner that he had repaid the loan in the name of the complainant and that he is in possession of documents to such effect which are also to be proved to substantiate the defence, thus, taken.

6. The prayer in the application was opposed and the objection was upheld by the first appellate court by the impugned order on the ground that the plea now taken is not in *sync* with the plea earlier taken and that a new case is being set up. The explanation of the petitioner, in contrast, is that the document dated 08.09.2000 in question had been handed over to the counsel who was assisting the petitioner in defence before the trial court, and it is he who failed to take the necessary steps in that regard.

7. In the above facts and circumstances, it appears just and proper that the petitioner be granted opportunity to lead additional evidence during the pendency of the appeal. The prayer under Section 391 Cr.P.C. for additional evidence to bring home the above facts should have been granted to the petitioner. After all, the quest of a trial is to reach out to the truth. The defence of the petitioner remains essentially the same as was set up before the trial court, it being, that there was no liability due on his account. If he is able to bring home the fact that the bus was under charge of the lender of money to the complainant prior to the sale of the vehicle to the petitioner and if he is able to also substantiate that he (the petitioner) had repaid the said

loan for and on behalf of the complainant, such repayment, it having a bearing on the sale consideration, the petitioner might be able to bring home his defence that there was no amount due, the purpose and object of handing over of the cheque in such case possibly being not what was projected by the complainant in the first place in his case.

8. But, it cannot be ignored at the same time that such defence should have been taken and the necessary evidence led when the matter was pending trial in the court of Magistrate. The delay occasioned by this move, however, can always be compensated by imposing costs.

9. Thus, the impugned order of the first appellate court is set aside. The prayer under Section 391 Cr.P.C. is granted, subject to costs of Rs.25,000/- to be paid to the complainant by demand draft, which shall be in the name of the complainant, to be delivered before the trial court before the next date of hearing. The first appellate court will proceed in this light further in accordance with law.

10. The petition and the application filed therewith are disposed of.

R.K.GAUBA, J.

SEPTEMBER 11, 2018

vk