IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-885-2015
Date of Decision: August 28, 2019

Manmohan Singh ....Petitioner

Versus

Daljit Singh Chadha .....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Bhavyadeep Walia, Advocate, for the petitioner.
Mr. Rakesh Gupta, Advocate, for the respondent.

Harnaresh Singh Gill, J.

The petitioner was tried for committing the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act'). Vide judgment and order dated 07.10.2013, learned Judicial Magistrate, Ist Class, Patiala, held the petitioner guilty under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of 9 months and to pay the complainant compensation equivalent to the cheque amount.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, Patiala. Vide judgment dated 12.02.2015, the learned Additional Sessions Judge, Patiala, dismissed the appeal filed by the petitioner, thereby affirming the judgment and order passed by the learned trial Magistrate. Still aggrieved, the petitioner has preferred the present revision petition.

The complainant set into motion the criminal prosecution against the petitioner for having issued him cheque bearing No. 802785 dated 8.10.2010 for Rs.2,50,000/- in lieu of the discharge of his debt/enforceable liability against the loan of said amount taken by the petitioner from the complainant on 20.4.2010. However, when the cheque was presented for encashment, the same was returned back unencahsed vide memo dated 9.10.2010 with the remarks `insufficient funds'. Thereafter, the complainant served upon the petitioner legal notice dated 23.10.2010 calling upon him to make the payment within the stipulated period of 15 days, but the same not being done, the complainant filed a complaint under Section 138 of the Act.

The learned trial Court, after having recorded the preliminary evidence, summoned the petitioner to face the trial, vide order dated 7.12.2010. Thereafter, notice of accusation was served upon the petitioner to which he pleaded not guilty and claimed trial.

The complainant had examined himself as CW1 and produced documentary evidence in the form of Exhibits CW1/A and Exhibits C.1 to C.5.

Statement of accused under Section 313 Cr.P.C. was recorded. All the incriminating material was put to the accused, which he denied and pleaded innocence. It was further stated by the accused-petitioner that he did not borrow any amount from the complainant; that his father and brother were publishing two newspapers and the complainant was the legal adviser and they used to keep varius documents, affidavits and signed cheques in their office; that the complainant used to visit their office and he had misused the cheque in question by taking away the same from his office; that the cheque book relating to the cheque in question got lost and intimation regarding the loss of the cheque book was given to the bank on 20.11.2004 and that the cheque in question was forged and fabricated by the complainant, inasmuch as the wrong name of the father and that of the shop of the accused-petitioner had been given by the complainant in the legal notice.

In his defence, the complainant had examined Manish Kumar, Assistant Manager, Indian Overseas Bank as DW1, but the said witness did not appear for cross-examination. Babu Ram, Special Cadre Assistant, Indian Overseas Bank, Tripuri Branch, Patiala, had been examined as DW1, who brought the statement of account of the accused-petitioner (Ex.DW1/A) and letter written by Manmohan Singh Ex.DW1/B. Still further, accused-petitioner examined Shri R.V. Vashista, Handwring and Fingerprint Expert, Patiala as DW2, who had tendered in evidence his duly sworn affidavit (Ex.DW2/A), report Ex. DW2/B and three photocharts Ex. DW2/C to Ex.DW2/E containing 7 digital photographs. The said expert had, after thorough examination, in his report opined that the disputed writing marked as Q1 on the cheque dated 8.10.2010 had not been written by the person, who wrote the specimen writings and moreover, the writing instrument and ink used to fill in the body writing of the cheque was different from the one used by the signatory of the cheque.

The learned trial Court on the basis of the evidence on record and after hearing the learned counsel for the parties came to the conclusion that the issuance of the cheque in question duly signed by the accused-petitioner, in favour of the complainant stood proved on record. It, however, did not find any substance in the plea raised by the accused-petitioner that the cheque had been misused by the complainant. It was further found that the accused-petitioner had alleged that his cheque had been misused by the complainant and on account of the said fact, he had got his account closed, but on the other hand, it was found that the cheque got dishonored with the remarks `insufficient funds'. Still further, it was found that as a prudent man, if the accused-petitioner did find at any stage that his cheque had been misused or stolen or otherwise, he as a person of ordinary prudence, ought to have initiated criminal proceedings regarding the same. With this conclusion, the learned trial Court, had passed the judgment of conviction and order of sentence as noticed above. In appeal, the said finding stood confirmed, when the appeal filed by the petitioner was dismissed.

Learned counsel appearing for the petitioner has vehemently argued that both the Courts below have totally misread and misinterpreted the evidence on record, inasmuch as the factum of the fabrication of the cheque by the complainant, went unappreciated despite the fact that the Handwriting and

Fingerprints Expert duly proved on record that the body of the cheque had been filled with a different handwriting and ink than the one with which the signatures had been appended in the cheque.

It is further argued that in the legal notice dated 23.10.2010 (Ex.C3), the complainant did not mention the date of the loan. In his testimony, the complainant could not point out any financial capacity to advance the loan of such a huge amount and still further, no Income Tax Returns were proved on record. It is further argued that in his cross-examination, the complainant admitted that he had not been issued any cheque on the date of advancement of the loan. It is further argued that the complainant had duly got summoned the records pertaining to his bank account from the concerned Bank, but the learned trial Court discarded the same on the ground that the original letter regarding the request of the petitioner for closure of the account was not produced. Thus, it is contended that the cheque had been misused by the complainant and the said factum despite having been established before the Courts below, the same was totally ignored by the Courts below.

Per contra, learned counsel for the respondent-complainant, while supporting the judgments and order passed by the Courts below has laid stress on the fact that admittedly, the complainant did not dispute his signatures on the cheque. Rather, what was disputed was the filling of the body of the cheque with a different ink that too with a different handwriting. It is further submitted that all these aspects having well been dealt with by the learned Courts below, no interference is called for by this Court in the present revision.

I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

Though learned counsel for the petitioner has vehemently argued that the cheque had been misused by the complainant, yet I find no merit in the said submission. The learned trial Court had elaborately dealt with this aspect of the matter. Merely because the body of the cheque had been filled in different handwriting with a different ink, does not oust the petitioner from his legal liability. Admittedly, the petitioner has not denied his signatures on the cheque. The plea that the signed cheque had been got misused by the complainant from the office of the petitioner and his father, does not appeal to the common prudence, especially when no criminal proceedings or complaint with the police, had been initiated/filed by the petitioner. This fact clearly shows that such plea was raised only as an afterthought.

Another very interesting aspect is that as per the accused-petitioner, the Bank account had been closed on 20.11.2004 upon an application submitted by him, yet the said fact got belied when the cheque issued by the accused-petitioner and presented by the complainant in the Bank for encashment, got dishonoured and returned by the Bank with the remarks of `insufficient funds'. If the account was closed, there was no occasion for the Bank to return the cheque with the aforesaid remarks. Both the Courts below, thus, while relying upon the judgment of this Court in Gurmeet Singh Vs. State of Haryana, 2012(2) RCR (Crl.) 306, had rightly held that once the signatures on the cheque stand admitted by the accused, he could not escape his liability under Section 138 of the Act.

Hon'ble Supreme Court in Bir Singh Vs. Mukesh Kumar, 2019(2) RCR (Criminal) page 1, has held that if a signed blank cheque is voluntarily presented to a payee towards some payment, the payee may fill up the amount and the other particulars and that this in itself would not invalidate the cheque. It was held as under:-

> "37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
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> 38. If a signed blank cheque is voluntarily presented to a payee towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

Still further, it is settled law that once the signature in the cheque is admitted by the accused/drawer, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. Such presumption, though is rebuttable, but in the instant case, both the Courts below have rightly recorded that the accused-petitioner had failed to rebut such presumption.

No other point has been urged.

In view of the above, I do not find any patent illegality or irregularity in the impugned judgments and order passed by the Courts below, which may warrant any interference by this Court in the present petition. Hence, the present revision petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

August 28, 2019
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No