IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203 **CRR-898-2012 (O&M)**
Reserved on : 13.03.2019
Pronounced on :19.03.2019

Ram Gopal

... Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.S. Mamli, Advocate, Advocate for the petitioner.

Mr. S.S.Pannu, DAG, Haryana.

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

HARNARESH SINGH GILL, J.

Present criminal revision is filed against the judgment dated 02.11.2011 passed by Sessions Judge, Yamuna Nagar at Jagadhri vide which the appeal filed by the petitioner against acquittal has been dismissed, by upholding the judgment of acquittal dated 29.10.2010 passed by Judicial Magistrate, Ist Class, Yamuna Nagar in a complaint case under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referrred as 'the Act') .

In brief, the case of the complainant-petitioner, namely, Ram Gopal is that respondent No.2-Saroj Kumari, in discharge of her existing liability had issued a cheque bearing No. 282547 dated 28.02.2004 for a sum of Rs.3,10,500/- drawn in the Bank of Punjab Limited, Jagadhari Road, Yamuna Nagar in favour of the petitioner-complainant. Respondent-accused, Saroj Kumari was ordered to be summoned for the commission of offence under Section 138 of the Act, vide order dated 27.07.2004 on which she pleaded not guilty and claimed trial.

To bring on record the guilt of respondent-accused, petitioner-complainant, stepped into the witness box as CW1 and had also examined Ram Gopal Dutt Verma, Clerk, State Bank of Patiala as CW2 and Lal Singh Dattana, Advocate as CW3. In support of his case, petitioner-complainant also placed on record the relevant exhibits.

In defence, respondent-accused had examined Dharam Pal as DW1, Sumit Arora, Handwriting Expert as DW2, Dilshad Ahmad as DW3 and K.B.Mehta, Advocate as DW4 and had also tendered exhibits to prove her innocence.

After taking into consideration the facts of the case, the trial court vide judgment dated 29.10.2010 had dismissed the complaint preferred by petitioner-complainant

Against the judgment dated 29.10.2010, the petitioner-complainant preferred an appeal before the Sessions Judge, Yamuna Nagar, which was also dismissed vide judgment dated 02.11.2011.

Counsel for the petitioner-complainant has argued that the respondent-accused issued a cheque bearing No. 282547 dated 28.12.2004 amounting to Rs.3,10,500/- drawn in the Bank of Punjab Limited, Jagadhri Road, Yamuna Nagar, in discharge of her existing liability. The petitioner-complainant accepted the cheque and presented the same in the State Bank of Patiaial Sugar Mill Area, Yamuna Nagar for encashment, which was dishonoured on account of "insufficient funds", vide memo dated 01.03.2004. Accordingly, respondent-accused was informed by the complainant and the said cheque was again presented for encashment, but again the cheque was dishonoured on account of "insufficient funds", vide memo dated 17.03.2014. Legal notice dated 24.03.2004 (Ex.C-6) was issued, still no payment was made by the respondent-accused. Thus, complaint was filed. As per counsel for the petitioner-complainant, respondent-accused is duty bound to discharge her existing liability in favour of the petitioner-complainant.

Per contra, learned State counsel and learned counsel for respondent No.2 have submitted that the cheque in question Ex.C-1 was never issued by the respondent-accused in favour of the petitioner-complainant nor the said cheque bears her signatures. The petitioner-complainant had some how forged her signature on the cheque by stealing the same while taking benefit of blindness of her husband. Learned State counsel has prayed to uphold the judgments passed by courts below.

After hearing the rival contentions of both the parties and having gone through the record of the case, it is clear that the respondent-accused had purchased land measuring 40 acres from Narain Singh and family and full and final payment was lastly made on 31.03.2004 for a sum of ₹ 4 Lacs vide cheque No. 282546. This fact is duly corroborated by the statement of accounts of the respondent-accused (Ex.D-5) i.e. her statement of accounts. As per the State counsel, it has come on record that Narain Singh, Baldev Singh and others have visited the house of the respondent-accused for taking the last and final payment of ₹4 Lacs and the respondent-accused had issued a cheque No. 282446 dated 31.03.2004 for a sum of ₹4 Lacs in their favour.

It has also been brought to the notice of this court that the husband of respondent-accused is a blind person and taking advantage of the same, cheque No. 282547 was stolen from the house of respondent-accused. The stolen cheque was somehow handed over to the petitioner-complainant who is of the same village where Narain and his family were residing.

It has also been come on record that the respondent-accused had not given the said cheque to petitioner-complainant and thus, there was no question of borrowing the amount from the petitioner. The respondent-accused had also placed on record judgment and decree dated 13.11.2006 (Ex.D1) granting relief of permanent injunction and restraining Narain Singh and family from interfering in the peaceful possession of Dharam Pal, husband of respondent; alienating the suit property except to plaintiff and restraining the defendants from cancelling the power of attorney dated 16.04.2004. In the said judgment, reference of cheque dated 31.01.2004 amounting to ₹4 Lacs, withdrawn by one of the defendants, Baldev Singh, is on record. Respondent-accused had also placed on record Ex.D-3, the decision of the Additional Sessions Judge, dated 04.09.2008 vide which judgment and decree passed by the the trial court dated 13.11.2006 were upheld.

So, to the mind of this court, during this transaction, the cheque in question was stolen by Narain and other and was handed over to the petitioner-complainant. This fact has been discussed in detail by the courts below. It has also inspired confidence in the mind of the court that the concocted story made up by the petitioner-complainant is totally unreliable. Firstly, the respondent-accused is not known to the petitioner-complainant. Secondly, the petitioner-complainant had no means to show as to how he had arranged the loan of such a huge amount. The petitioner-complainant in his cross-examination stated that he owned one acre of land and was having income of ₹3,000/- per month, being a Depot Holder. So to my mind the person with this meager income cannot advance the huge amount of loan.

Further more, the assertion of petitioner that he advanced loan to other loanees also is totally false as he could not produce any record of the same nor was able to tell their names. The petitioner-complainant is an income tax assessee. Even the loan amount, advanced to respondent-accused, had not been shown in the income tax return. Thus, the contradictory versions of the petitioner-complainant creates a doubt in the mind of this court regarding issuance of cheque in question in favour of the respondent-accused.

The disputed signatures of Saroj Kumari, respondent-accused had also been compared by the Forensic Document Expert, Mr. Sumit Arora, who stepped into the witness box as DW-2. In his report, Ex.DW2/1, he had drawn the conclusion that the disputed signatures marked as Q1 had not been signed by the person (Saroj Kumari) who had affixed her standard signatures marked as S1 to S6 in the name of Mrs. Saroj Kumari. The denial of the petitioner-complainant in his evidence that he did not know Narain Singh and Parminder Singh, is again questionable as in his further examination on 05.08.2009, the petitioner-complainant admits that Narain Singh and Parminder belong to his vailage.

Taking into consideration the above facts and circumstances, this court is not inclined to interfere in the well reasoned judgments passed by the courts below. Hence the present petition stands dismissed.

(HARNARESH SINGH GILL)
19.03.2019 **JUDGE**
pooja saini

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*