

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-21532-2019 (O&M)

Date of decision: 03.02.2020

Bhag Singh

....Petitioner

Versus

Kuldeep Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Sana Kaur, Advocate for  
Mr. Rakesh Gupta, Advocate  
for the petitioner.

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ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the judgment dated 26.08.2015 passed by the trial Court, dismissing complaint No.502/2013 under Sections 420, 406, 506, 426 of the Indian Penal Code (for short 'IPC'), titled as Bhag Singh Vs. Kuldeep Singh, filed by the petitioner as well as the judgment dated 06.01.2016 passed by the Additional Sessions Judge, vide which the revision petition filed by the petitioner, was also dismissed.

In short, facts are taken from the judgment of the trial Court, which reads as under: -

*“Brief facts of the complaint are that in July 2004, complainant was in need of money. Somebody told him that Kuldeep Singh Lambardar is doing the business of money lending. He approached Kuldeep Singh and stated that he is in need of Rs.1,00,000/-. Kuldeep Singh told him that he will give money to*

*him, but in return he will have to give him blank signed cheque and will have to pay interest @ 5% per month. Accordingly, he gave cheque No.0187172 on 02.12.2005, after signing the same. Within one year, he returned the borrowed amount along with interest to Kuldeep Singh. He asked Kuldeep Singh to return the cheque, but Kuldeep Singh stated that the cheque has been lost and after recovery of the same, he will return the same to him. On 19.11.2006, he received summons under section 138 of Negotiable Instruments Act. He obtained bail and came to know that one Labh Singh had filed compliant for Rs.4,50,000/-. He met Labh Singh, who told him that about 4/5 months ago Kuldeep Singh came to his house and stated that he is in need of Rs.3,00,000/-. After borrowing amount of Rs.3,00,000/-, Kuldeep Singh gave him cheque of Rs.4,50,000/- to him and told that if he will not return Rs.3,00,000/- within five months, then he will pay Rs.4,50,000/-. After that he met his counsel, who told him that cheque has been issued by Bhag Singh, so he was not aware that whether Kuldeep Singh had given his own cheque on that of Bhag Singh as he is illiterate. After that, complainant went to house of Kuldeep Singh and demanded his cheque. Kuldeep Singh refused to return the cheque and threatened him. He repaid money to Labh Singh and Labh Singh had withdrawn the complaint on 30.05.2009. When he gave cheque to Kuldeep Singh, Nahar Singh and Jaswant Singh were present. Accused had cheated him. Hence, present complaint.*

*In preliminary evidence, complainant himself has appeared into witness box as PW1 and reiterated the version of the complaint. He has further examined Jaswant Singh as PW2, Swaran Singh as PW3 and Labh Singh as PW4 and Gurpreet Singh as CW5, who have corroborated the version of the complainant. Thereafter, complainant has closed his preliminary evidence.*

*As per version of the complainant, he had taken loan of*

*Rs.1,00,000/- from accused Kuldeep Singh and had given one blank signed cheque to him as security. He had repaid the amount to Kuldeep Singh but Kuldeep Singh failed to return the cheque to him. On 19.11.2006 he received summons in complaint under section 138 NI Act which was filed by Labh Singh against him. On inquiry from Labh Singh, he came to know that Kuldeep Singh accused had given his cheque to Labh Singh of Rs.4,50,000/- and obtained Rs.3,00,000/- from Labh Singh. Kuldeep Singh gave his cheque to Labh Singh which was signed by him and which was blank. After that, he repaid the amount to Labh Singh and complaint was withdrawn by Labh Singh. He has stated that accused has cheated by misusing his cheque. Perusal of photocopy of order dated 30.5.2009 reveals that Labh Singh complainant had withdrawn the complaint as matter was compromised between him and Bhag Singh. Moreover, complainant himself has admitted that he had paid the money to Labh Singh. Complainant himself has stated that he got the summons in complaint on 19.11.2006 but present complaint was filed by him on 7.10.2009 whereas the matter was compromised between him and Labh Singh on 30.5.2009. Complainant has failed to show that why he has filed complaint after such a long period. Moreover, complainant has not placed on record any cogent evidence to prove that he had repaid the money to Kuldeep Singh but Kuldeep Singh failed to return the cheque. Moreover, PW4 Labh Singh in his evidence has stated that he had filed complaint against Bhag Singh and matter was compromised as Kuldeep Singh had repaid the money to him. Labh Singh has also not taken any action against Kuldeep Singh for issuing wrong cheque in his favour.*

*I have heard learned counsel for the complainant at length and have gone through the material available very carefully. I have considered the submissions made meticulously. From the perusal of the preliminary evidence as well as from*

*evidence placed on file, no offence under sections 420/ 406/ 506/ 426 IPC is made out against accused Kuldeep Singh Lambardar.*

*Thus, in view of the discussions made hereinabove, the present complaint is hereby ordered to be dismissed against accused Kuldeep Singh Lambardar. File be consigned to the record room after due compliance.”*

Thereafter, the petitioner preferred a revision petition before the Court of Sessions and the same was also dismissed vide impugned judgment dated 06.01.2016.

Learned counsel for the petitioner has argued that the petitioner-complainant is an illiterate person and the respondent-accused has taken a blank cheque from him in lieu of some amount, which was borrowed by the petitioner, but after receiving the amount back, the cheque was not returned by the respondent. It is further argued that the blank signed cheque of the petitioner was given to one Labh Singh, who, by filling of an amount of Rs.4.50 lacs, had filed a complaint under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') and thereafter, a compromise was effected in those proceedings, in which the petitioner paid an amount of Rs.4.50 lacs to aforesaid Labh Singh, as per the compromise.

Learned counsel for the petitioner has further argued that in fact, the respondent-accused has cheated the petitioner-complainant, as he has misused the cheque, which was given as security, while borrowing some amount from the respondent and despite receiving the said amount, he, instead of giving the blank signed cheque back to the complainant, has given it to one Labh Singh, who had filed the aforesaid complaint.

After hearing learned counsel for the petitioner and on re-

appreciation of the evidence, with the assistance of learned counsel for the petitioner, who has given photocopy of evidence, I find no merit in the present petition, for the following reasons: -

- (a) As per version of the petitioner-complainant, who appeared as CW1 in the preliminary evidence, he had taken a loan of Rs.1.00 lac from respondent Kuldeep Singh and had given a blank signed security cheque, which was misused by the respondent, by giving it to one Labh Singh, who has filed a complaint under Section 138 of N.I. Act and ultimately, when the petitioner paid the amount to him, the said complaint was withdrawn on the basis of compromise. There is no evidence to prove that the petitioner did not owe the aforesaid amount to Labh Singh, as he had effected the compromise and has made the payment to him. The very fact that the petitioner never defended the said complaint by way of leading evidence, to rebut the presumption, shows that in fact, he acceded the claim of complainant Labh Singh in those proceedings.
- (b) A perusal of statement of CW1 shows that he has nowhere stated that he had given any complaint against aforesaid Labh Singh or respondent-accused Kuldeep Singh to any authority or police regarding cheating committed by respondent Kuldeep Singh or Labh Singh. There is a gap of three years, when he had received the summons in the proceedings arising out of a complaint under Section 138 of N.I. Act, which was instituted on 19.11.2006 and later on, compromised by the petitioner on 30.05.2009, whereas

the present complaint was filed on 07.10.2009. There is no explanation of delay of three years in filing the present complaint, much less, there is no explanation why the petitioner has not approached the police authorities about the alleged cheating committed by respondent Kuldeep Singh.

Therefore, I find no ground to differ with the well-reasoned findings recorded by both the Courts below, dismissing the complaint of the petitioner.

Accordingly, the present petition is dismissed.

[ ARVIND SINGH SANGWAN ]  
JUDGE

03.02.2020  
*vishnu*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |