IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-957-2021

Date of Decision: 06.09.2021

Parshotam Lal …Petitioner

Versus

Gulshan Kumar Uppal ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Jimmy Singla, Advocate, for the petitioner.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court challenging judgment dated 29.01.2020 passed by the learned Sessions Judge, Barnala, vide which the judgment of conviction and order of sentence rendered by the learned Additional Chief Judicial Magistrate, Barnala, holding the respondent herein guilty of having committed an offence under Section 138 of the Negotiable Instruments Act, has been set aside.

2. The petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent alleging therein that the petitioner is into the business of *Karyana* shop and also collects milk from the residents of Tapa and other adjoining areas and sells the same to the accused/respondent and that he had been doing the said business since the last about 4 months. It is alleged

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that on account of the milk sold by the petitioner to the respondent, the respondent had issued following three cheques dated 31.12.2012 for a total amount of Rs.13 lakhs:

Sr. No.	Cheque No.	Amount
1.	730923	Rs.5,00,000/-
2.	730924	Rs.4,00,000/-
3.	730927	Rs.4,00,000/-

3. The petitioner has further alleged that the aforesaid cheques dated 31.12.2012 on presentation were dishonoured and even though a requisite notice in this regard was also issued to the respondent, but no payment in respect of the said dishonoured cheques was made.

4. The respondent was summoned by the trial Court and was tried and was held guilty vide judgment dated 22.04.2019.

5. The respondent being aggrieved by the said judgment dated 22.04.2019 rendered by the learned Additional Chief Judicial Magistrate, Barnala challenged the same by way of filing an appeal, which was accepted by the learned Sessions Judge, Barnala and the respondent was acquitted.

6. The petitioner/complainant being aggrieved by the acceptance of appeal vide impugned judgment has challenged the same by filing the instant revision petition.

7. Learned counsel for the petitioner has submitted that the learned Appellate Court fell in error in holding that no liability for payment of an amount of Rs.13 lakhs would have accrued by 31.12.2012 so as to have any occasion for the respondent to issue the cheques in question, who in any case had lodged a complaint in respect of loss of said cheques. It has been submitted that in fact

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there is presumption of existence of legal liability when a cheque is issued and that the learned Appellate Court on flimsy grounds has rebutted the said presumption. It has further been submitted that another reason assigned by the learned Appellate Court regarding there being no liability towards the respondent and that the liability of Rs.13 lakhs was against M/s Ganesh Diary is patently incorrect inasmuch as the respondent had on earlier occasion himself filed a complaint on behalf of M/s Ganesh Diary against the petitioner in which the petitioner was discharged and that a copy of the said complaint and the summoning order were tendered into evidence as Exs.D-1 and D-2 respectively. It has further been submitted that since the impugned judgment is a judgment of reversal, the revision may be admitted so as to peruse the entire record.

8. I have considered the aforesaid submissions addressed before this Court.

9. Even if the contention of the petitioner as regards the alleged admission of the respondent being associated with M/s Ganesh Diary is accepted, still this Court finds that the reasoning, as recorded by the learned Appellate Court in paragraphs 14 & 15 of its judgment, is well founded. Paragraphs 14 & 15 read as under:

> "14. The accused has produced and proved on record copy of DDR lodged by him on 26.11.2012 with regard to loss of three cheques bearing no.730923, 730927 and 730924. DDR Ex.D3 was lodged on 26.11.2012 and date when cheques were lost is recorded as 18.11.2012. As per the complainant, the transaction to supply the milk started on or about 22.11.2012. So, after start of that transaction, on 26.11.2012 Ex.D3 was lodged and it is not the case of the complainant that by 26.11.2012 the entire quantity of

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> milk costing Rs.13 lakh was already supplied to accused. When it was not done, there was no question of accused having handed over the cheques to the complainant and thereafter lodging the report regarding loss of the cheques in question.
>
> 15. The cheques in question were shown to have been issued on 31.12.2012. The cheques are Ex.C1, Ex.C2 and Ex.C3. The accused has lodged the report of cheque having been gone missing on 26.11.2012. The cheques Ex.C1 to Ex.C3 are dated 31.12.2012 and as per the complaint, on 26.11.2012 there was no liability and further more as per averments of the complainant, liability was created four month immediately proceeding filing of the complaint. The complaint was filed on 21.03.2013. If that is taken then the liability was not there even on 31.12.2012 the date of issuance of cheque."

10. From a perusal of the aforesaid paragraphs, it is evident that even before the issuance of cheques on 31.12.2012, a report regarding loss of the said cheques had already been lodged in the month of November, 2012 by the respondent. In fact, the said report was lodged on 26.11.2012 (Ex.D3). The complaint was filed in the month of March, 2013 i.e. on 21.03.2013, wherein it is stated that he had started the business of supply of milk four months back which would be w.e.f. 21.11.2012. Since cheques were issued on 31.12.2012, it would virtually be the case of the complainant that the entire liability of Rs.13 lakhs accrued within about one month i.e. w.e.f. 21.11.2012 to 31.12.2012 which is in fact not the case of the complainant as he alleges that he has been supplying since four months. Further, no details of the said supply of milk had been furnished. It is not even the case that a round figure amount had been paid in advance.

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11. No doubt, this Court is competent to draw a presumption, but such a presumption can well be rebutted as has been done in the present case. This Court does not find any infirmity in the findings recorded by the learned Sessions Judge in the impugned judgment, as the same has been recorded after duly appreciating the facts. The learned Sessions Judge has correctly reached at a conclusion that there is no legal liability necessitating issuance of cheques in question.

12. As such, the impugned judgment is upheld and the instant revision petition being sans merit is hereby dismissed.

06.09.2021 **(GURVINDER SINGH GILL)**
Vimal **JUDGE**

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

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