IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRR-486-2022(O&M)

Date of Decision:-14.12.2022

Jaswinder Kaur.

......Petitioners.

Versus

State of Punjab & Anr.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Vijay Rana, Advocate for the Petitioner.

Ms. Ramta Chowdhary, Deputy Advocate General, Punjab.

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JASJIT SINGH BEDI, J.

1. The present revision petition has been filed against the order dated 05.04.2019 passed by the Additional Sessions Judge, Jalandhar, District Jalandhar, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence both dated 09.10.2018 passed by the Judicial Magistrate, 1st Class, Jalandhar has been dismissed.

2. The brief facts of the complaint are that the petitioner-accused was having family relations with the respondent no.2/complainant and under the garb of these relations, the accused borrowed a sum of Rs. 6,00,000/-(Rs. Six Lakh Only) from the complainant in the year 2014 and on a persistent demand for the return of the said borrowed amount made by the complainant to the accused, she in order to discharge her above said financial obligation and legally enforceable debt issued a cheque bearing No. 584595 dated 16.11.2016 for Rs. 6,00,000/- (Rs. Six Lakh Only) drawn on Canara Bank, Sufi Pind Branch, Jalandhar from her account No. 3610101000768 in favour of the complainant. The complainant accepted the

said cheque on representation and assurance made by the accused that the said cheque was good for payment and the same would be honoured and encashed when presented to her banker. The complainant presented the said cheque for encashment to the banker of the accused through United Bank of India, G. T. Road Branch, Jalandhar, being the banker of the complainant. However, the said cheque was dishonoured and was returned unpaid with the memo dated 18.11.2016 of United Bank of India, North Branch, Jalandhar, with the remarks "Drawers Signature Differs". Thereafter, the accused was got served with a legal notice of demand dated 25.11.2016 through registered post as well as under certificate of posting at her residence address, calling upon her to make payment of the cheque amount i.e. Rs. 6,00,000/- to the complainant within 15 days from its receipt. Despite service of the notice, the accused willfully failed to make payment of the cheque amount to the complainant within the stipulated period leading to the filing of the complaint.

3. In preliminary evidence, the statement of the complainant as CW-1 was recorded in which the complainant tendered his duly sworn affidavit Ex.CA reiterating the facts as mentioned in his complaint. He also tendered cheque Ex.C1, memo Ex.C2, notice Ex.C3, and postal receipt Ex.C4 and thereafter closed his preliminary evidence. Thereafter, the accused was ordered to be summoned to face trial under Section 138 of Negotiable Instruments Act vide order dated 16.12.2016..

4. Upon appearance notice of accusation under Section 138 of Negotiable Instruments Act was served upon the accused vide order dated 23.08.2017 to which she pleaded not guilty and claimed trial.

5. In after notice evidence, the complainant Gurmeet Singh stepped into the witness box as CW1 and tendered into evidence his affidavit Ex.CA. He also proved cheque bearing no.584595 dated 16.11.2016 Ex.C1 for the sum of Rs. 6,00,000/-, memo dated 18.11.2016 Ex.C2, legal notice dated 25.11.2016 Ex.C3 and postal receipt dated 25.11.2016 Ex.C4. He was cross-examined and thereafter, he closed his evidence vide his statement dated 19.12.2017.

6. Thereafter, the statement of the accused Jaswinder Kaur was recorded under Section 313 Cr.PC wherein all the incriminating evidence appearing against her was put to her, but she pleaded her false implication.

She stated that she was innocent. She had never taken Rs.6,00,000/- from the complainant Gurmeet Singh who had family relations with her family. Gurmeet Singh usually came to her house. He had stolen her cheque and filled the same and signed the same and had presented it to her bank for encashment. The said cheque had been dishonoured with the remarks "drawers signature differ". The complainant Gurmeet Singh filed a false and fabricated complaint against her to grab money from her. Gurmeet Singh complainant had no financial capacity to advance Rs.6,00,000/- to her. Before filing the complaint Gurmeet Singh never issued any notice to her nor filed any complaint against her before any competent authority. Gurmeet Singh had misused the cheque in question filled the same and signed it himself or got it signed from some other person. She filed a complaint against Gurmeet Singh before the police for theft of her cheque in question. The police did not take any action against Gurmeet Singh on her complaint. The accused opted to lead evidence in defence.

7. In defence evidence, the accused examined DW-1 Sonia who tendered into evidence her duly sworn affidavit Ex. DW1/A. No other witness was examined and the accused closed his defence evidence vide her statement dated 09.10.2018.

8. Based on the evidence lead the petitioner/accused came to be convicted and sentenced to undergo rigorous imprisonment for two years and pay as compensation amount of Rs.6,00,000/- under Section 357 Cr.PC.

9. The petitioner/accused preferred an appeal before the Court of Additional Sessions Judge, Jalandhar and the said appeal came to be dismissed vide judgment dated 05.04.2019.

The aforementioned two judgments are under challenge in the present revision petition.

10. The Counsel for the petitioner contends that no specific date and month has been mentioned in the complaint as to when the complainant had advanced a sum of Rs.6 lacs to the petitioner/accused and no document in this regard was executed. The complainant had stolen the cheque and misused it. No amount above Rs.20,000/- could be paid in cash in terms of the Income Tax Act. It was strange that an amount of Rs.6 lacs was advanced to the petitioner in the year 2014 but the cheque in question was issued on 16.11.2016. The complainant had not been able to explain as to

how he was able to raise such a huge amount of money to pay to the petitioner. He thus contends that the judgment of conviction be set aside and the petitioner be acquitted of the charges levelled against her.

11. None has appeared for the respondent no.2-complainant.

12. The Counsel for the State on the other hand contends that the offence stands established against the petitioner. The grounds raised by the petitioner have been dealt with comprehensively firstly by the Trial Court and thereafter by the lower Appellate Court. Therefore, there was no infirmity in the judgments of conviction and the present petition ought to be dismissed.

13. I have heard Counsel for the parties.

14. The case of the accused/petitioner is that the cheque was stolen by the complainant from her house as the complainant was a regular visitor. In support of this contention the petitioner-accused examined DW-1 Sonia who stated that she was known to the petitioner/accused as also the complainant/respondent. The accused had never borrowed Rs.6 lacs from the complainant and the cheque had not been issued by her. In fact the cheque had been misplaced by the accused and after fraudulently taking the same the complainant filled and signed it. The accused wanted to grab money from the complainant because of which the present complaint had been filed.

The testimony of this witness would show that it is vague and she has not stated that the cheque had been stolen. There is no explanation as to why the complainant wanted to grab money from the accused. She admitted that she being a neighbour of the accused had come to the court to depose on the asking of the accused. This DW also admitted that she did not know as to how much money was due from Jaswinder Kaur -accused and that she had never seen her (accused/petitioner) sign any document or paper. She also admitted that the petitioner-accused Jaswinder Kaur had not filed any complaint against the complainant regarding theft or misuse of the cheque. Thus apparently, this witness is unreliable and there is no other substantial evidence to support the plea taken by the petitioner-accused. No DDR or FIR or any other document had been exhibited to show that the theft of the cheque in question was committed by the respondent/complainant. Further no previous enmity had been established between the two.

Further, the contention of the petitioner that because the date and month of the advancement of the loan had not been mentioned in the complaint made the case doubtful is also baseless as no such question was put to the complainant in his cross examination.

Still further, in transactions of this kind between the persons known to each other the question of a writing being executed at the time of advancement of the loan is unlikely.

Merely because the complainant/respondent failed to produce any document to establish his financial capacity to advance the loan to the petitioner/accused would not be the only determining factor in establishing the culpability or lack thereof of the petitioner in view of all the facts taken cumulatively.

In the cross examination of the respondent/complainant, surprisingly, no questions were put with regard to the source of the income of the complainant. Similarly no questions were put with regard to the filing of the income tax returns by the complainant/respondent.

In view of the aforesaid facts and circumstances, the statutory presumptions under Section 118 and 139 of Negotiable Instruments Act, 1881 clearly stands unrebutted.

15. Thus, I find no merit in the present petition and the same is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

December 14, 2022
Vinay

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