

112
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-942-2022(O&M)
Date of Decision: 29.09.2022

GURCHET SINGH

....Petitioner(s)

Versus

SATNAM SINGH AND ANR

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kamal Narula, Advocate for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

The present is a revision petition filed challenging the order passed by the Sub Divisional Judicial Magistrate, Nihal Singh Wala dated 04.10.2018 in a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 wherein the petitioner was convicted and was directed to undergo simple imprisonment for a period of one year and to pay a fine of Rs. 1000/- and in default to make payment of fine, the petitioner will further undergo simple imprisonment for a period of one month and also the orders passed by the learned Additional Sessions Judge, Moga dated 10.01.2022 whereby the appeal filed by the petitioner was dismissed.

The facts of the present case were that the petitioner against whom the complaint was filed by the respondent issued a cheque for an

amount of Rs. 1,00,000/- after purchasing gold ornaments from him and with regard to the same, he had also executed an agreement dated 23.01.2017 which was duly notarised on 24.01.2017 in favour of the complainant. For the purpose of discharging of his liability, he had issued a cheque No.345288 dated 02.08.2017 for an amount of Rs. 1,00,000/- drawn on State Bank of India, Nihal Singh Wala, District Moga. However, on the presentation of the cheque, the same was dishonoured with the remarks that the funds were insufficient. Thereafter, the complainant served a legal notice upon the petitioner through his counsel but to no effect and thereafter, the present complaint was filed. The complainant himself stepped into the witness box and tendered into evidence the aforesaid duly sworn affidavit dated 23.01.2017/24.01.2017 which was exhibited. He also tendered into evidence original cheque as Ex. C1, bank memo as Ex.C2, original agreement dated 23.01.2017 as Ex. C3, legal notice dated 11.08.2017 as Ex. C4, postal receipt as Ex. C5, reply of legal notice as Ex.C6 and copy of Aadhar Card as Ex. C7 and closed the preliminary evidence. On the basis of the aforesaid preliminary evidence, the petitioner was summoned. Thereafter, during the course of trial the complainant examined CW1 Pawan Kumar who was the attesting witness of the agreement and who tendered into evidence his duly sworn affidavit Ex. CW1/A. The complainant himself also stepped into the witness box as CW2 and tendered his duly sworn affidavit Ex. CW2/A and all the other documents were also proved on record. Thereafter, one Chaman Lal Goyal, who was the Notary Public in the aforesaid affidavit dated 24.01.2017 also

stepped into the witness box and proved his notary register bearing No.114 dated 24.01.2017 and thereafter, the complainant closed the evidence. The statement of the petitioner under Section 313 Cr.P.C was recorded but he did not choose to lead any defence evidence.

The learned Sub Divisional Judicial Magistrate, Nihal Singh Wala by discussing the entire evidence came to the conclusion that the issuance of cheque and the signatures are not in dispute and there is no denial on the part of the petitioner that the cheque in question was not issued by him. Apart from the above, he did not choose to lead any evidence nor did he step into the witness box and therefore, the statutory presumption in favour of the complainant-respondent could not be rebutted by the petitioner. While relying upon various judgments with regard to the effect of statutory presumption, the petitioner was convicted.

The petitioner assailed the aforesaid order by filing appeal before the learned Additional Sessions Judge, Moga whereby the learned Additional Sessions Judge, Moga also discussed the evidence and relying upon various judgments of the Supreme Court and the High Court also came to the conclusion that in view of the facts and circumstances, the trial Court has rightly held that the petitioner has committed an offence under Section 138 of the Negotiable Instruments Act, 1881.

Against the aforesaid judgments recording concurrent finding of facts, the present revision petition has been filed before this Court.

Record has been perused by this Court. The petitioner has not led any evidence during the course of trial. On the other hand, the

complainant-respondent has not only examined himself and the other witnesses apart from proving the documents on record has also proved the agreement Ex. C3 which is duly notarised from where it is clear that the petitioner had issued a cheque for discharge of his liability. The presumption which arose in favour of the respondent-complainant especially in view of the fact that the signatures and the issuance of cheque is not disputed has not been rebutted at all by the petitioner. The scope of a revision petition is very restricted. The learned counsel for the petitioner while arguing was not able to make out any ground for interference in Revisional Jurisdiction.

In view of the above, this Court is of the view that there is no illegality or perversity in the order dated 04.10.2018 passed by the learned Sub Divisional Judicial Magistrate, Nihal Singh Wala and also in the order dated 10.01.2022 passed by the learned Additional Sessions Judge, Moga.

Consequently, the present revision petition is hereby dismissed.

29.09.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)**JUDGE**

: Yes/No
: Yes/No