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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-966-2022 (O&M)
Date of Decision: 10.10.2022

JAGBIR

....Petitioner(s)

Versus

DISTRICT PRIMARY CO-OP AGRI. AND RURAL
DEVELOPMENT BANK LTD. AND ANOTHER

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rakesh Gupta, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

The present revision petition has been filed assailing the orders passed by the learned Judicial Magistrate Ist Class, Karnal dated 08/10.08.2017 and also orders passed by the learned Additional Sessions Judge, Karnal dated 01.04.2022 whereby the appeal filed by the petitioner was dismissed.

The subject matter of the present complaint is under Section 138 of the Negotiable Instruments Act, 1881. Respondent No.1 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner and one another person namely Suresh. However, the aforesaid Suresh was not summoned and the proceedings commenced only against the present petitioner namely Jagbir.

The facts from which the present complaint was filed were that

the petitioner had taken two loans from respondent No.1-bank for a sum of Rs. 5,45,000/- and Rs. 55,000/-. The loan of Rs. 5,45,000/- was taken for the purpose of purchase of tractor and loan of Rs. 55,000/- was taken under the Land Reclamation Scheme. Thereafter, the petitioner did not maintain his loan accounts regularly and committed breach of terms and conditions of loan/security documents and, therefore, amount was due against the petitioner. For the purpose of discharge of his liability, he issued a cheque bearing No.205113 dated 07.04.2016 for a sum of Rs. 5,80,000/- drawn at Corporation Bank, Gharaunda District Karnal. Thereafter, the said cheque was presented before the bank which was ultimately dishonoured on 08.04.2016 with the remarks 'Funds Insufficient'. Thereafter, the complainant/respondent No.1 served a legal notice dated 03.05.2016 and the petitioner did not even reply to the legal notice and thereafter, the complaint was filed within the period prescribed under the Act. The complainant led preliminary evidence and it was only the petitioner who was summoned for facing the trial and the other accused namely Suresh was not summoned. Thereafter, the complainant examined himself as CW-1 and tendered into evidence his affidavit Ex. CW1/A alongwith various documents which included original cheque as Ex. C1, return memo as Ex. C2, copy of legal notice, as Ex. C3, postal receipts as Ex. C4 and Ex. C5, loan applications Ex. C6 and Ex. C10, mortgage deeds Ex. C7 and Ex. C11, statements of bank account of the accused Ex. C8, Ex. C9, Ex.C12 and Ex. C13 and resolution dated 10.02.2015 as Ex. C14 and thereafter, closed his evidence. Thereafter, the statement of the petitioner was recorded under Section 313 of Cr.P.C wherein he pleaded innocence and had further submitted that he had neither signed the cheque in dispute nor he

signed the loan agreement. The petitioner did not lead any defence evidence and closed his oral as well as documentary evidence on 02.08.2017 and 08.08.2017.

The learned trial Court while examining the statement of the parties and the documents on the record came to the conclusion that the only ground which has been taken by the petitioner was that he never signed or issued any cheque nor did he execute the loan agreement. However, the petitioner did not make any effort to get the same compared by way of any handwriting expert or any expert authority and rather on the other hand, not even a single defence witness was examined nor any document was tendered into evidence. Learned trial Court further observed that a statutory presumption has arisen in favour of the complainant-bank which although was rebuttable presumption but the same has not been rebutted by the petitioner at all and, therefore, relying upon the law laid down by the Hon'ble Supreme Court in number of cases convicted the petitioner. The learned trial Court also made an observation that the plea taken by the petitioner that he did not sign the cheque or that the signatures were not of the petitioner also cannot be accepted because when the cheque was presented to the bank and the same was dishonoured the memo shows that remarks were made that account is inoperative and funds insufficient but it was not with a remark that the signatures differ which would show that even the bank has dishonoured the cheque not on the ground that the signatures were different but on the ground that the funds were insufficient and account was inoperative and therefore, the petitioner could not have taken up such a plea apart from the fact that he did not even examine any handwriting expert.

The petitioner thereafter preferred an appeal before the learned Sessions Court and the learned Additional Sessions Judge, Karnal while again discussing the entire evidence which were available on record affirmed the conviction and dismissed the appeal on 01.04.2022.

I have heard the learned counsel for the petitioner and also perused the record.

The complaint was filed by respondent No.1-bank by alleging that the petitioner had issued a cheque of Rs. 5,80,000/- but when the cheque was presented before the bank the same was dishonoured with the remarks that the funds are insufficient. At the time of evidence respondent No.1 proved on record the original cheque, return memo, copy of legal notice, postal receipts, loan applications, mortgage deeds etc. and it was the case of respondent No.1-complainant that the cheque was issued in discharge of the liability on two accounts i.e. for the tractor loan and for Land Reclamation Scheme. In this way, a statutory presumption arose in favour of respondent No.1-bank. Since the statutory presumption was rebuttable presumption, the onus shifted to the petitioner but the petitioner failed to lead any evidence and after recording the statement under Section 313 Cr.P.C, he closed his evidence. Therefore, the only ground which was taken by the petitioner in his statement under Section 313 Cr.P.C was dealt in detail by the learned trial Court. The ground which was taken by him was that he did not sign the cheque nor did he execute any loan agreement. However, a perusal of the record would show that all the loan documents have been tendered into evidence and exhibited. The petitioner did not get any handwriting expert examined for the purpose of comparison of the signatures etc. Similarly, so

far as the loan documents are concerned, again no such expert was examined in this regard and rather, not only a single defence witness was examined. Had it been a case of dispute with regard to the signatures or that assumingly the plea of the petitioner that he did not sign the cheque is accepted for the sake of arguments, the same cannot be accepted in view of the fact that the dishonour by the bank was made not on the ground that the signatures differ but on the ground that there were insufficient funds. Be that as it may, the petitioner was not able to rebut the statutory presumption which arose in favour of the bank. Even at the time when the learned Appellate Court was considering the appeal the learned Appellate Court also appreciated the evidence which were available on record and rightly dismissed the appeal.

In view of the above, this Court is of the view that there is no illegality or perversity in the order dated 08/10.08.2017 passed by the learned Judicial Magistrate Ist Class, Karnal and also in the order dated 01.04.2022 passed by the learned Additional Sessions Judge, Karnal

Consequently, the present revision petition is hereby dismissed.

10.10.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No