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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-736-2021 (O&M)
Date of Decision: 06.07.2022

Manohar Singh

....Petitioner(s)

Versus

Pawan Kumar and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. A.K.Sama, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

CRM-21591-2021

The present application has been filed seeking condonation of delay of 39 days in filing the present revision petition.

For the reasons stated in the application, the same is allowed. The delay of 39 days in filing the present revision petition is hereby condoned.

Main case

The present is a revision petition filed challenging the order passed by the learned Judicial Magistrate Ist Class, Jalalabad (W) dated 24.07.2017 whereby the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 as well as the judgment in appeal passed by the learned Additional Sessions Judge, Fazilka dated 06.11.2019 whereby the conviction has been upheld and the appeal has been dismissed.

A complaint was filed by the complainant-respondent dated 15.06.2016 before the learned Judicial Magistrate Ist Class, Jalalabad (W) against the present petitioner (accused) on the ground that the petitioner had taken a family loan from the complainant to the tune of Rs. 1,50,000/- in the month of April, 2016 and he promised to repay the same within a short period and for the purpose of discharging his legal liability, he issued a cheque bearing No.004569 dated 05.05.2016 drawn on Central Bank of India, Branch Jalalabad (W) in favour of the complainant. The complainant presented the cheque before the concerned branch but the same was dishonoured with a note of 'Funds Insufficient'. Thereafter, statutory notice was also given to the petitioner-accused. However, no reply was filed by the petitioner-accused to the aforesaid notice. Thereafter, the complaint was filed by the complainant-respondent.

At the time of the complainant's evidence, he stepped into witness box as CW1 and had also tendered his affidavit Ex. CW1/A and reiterated the averments made in the complaint. He also tendered into evidence the original cheque dated 05.05.2016 as Ex. C1, Memo of Central Bank of India dated 07.05.2016 as Ex. C2, legal notice dated 17.05.2016 as Ex. C3, postal receipt dated 17.05.2016 as Ex. C4 and acknowledgement as Ex. C5 and thereafter, he closed his evidence. The statement of the petitioner-accused under Section 313 Cr.P.C was also recorded whereby he pleaded his innocence by stating that he was falsely implicated in the present case. However, no evidence was led by the petitioner-accused. Learned trial Court while discussing the entire evidence available on the record returned a finding that the signatures on the cheque were not disputed by the petitioner and, therefore, a statutory presumption arose in favour of

the complainant. There was no material available on the record to rebut the statutory presumption. The petitioner did not even reply to the statutory notice which was given to the petitioner prior to the filing of the complaint nor did he lead any evidence and he had only stated that he has been falsely implicated in this case but there was no material on the basis of which he had pleaded his innocence. He has not been able to show any enmity with the complainant-respondent and, therefore, there was nothing on the record to rebut the statutory presumption which arose in favour of the complainant and, therefore, the learned trial Court convicted the petitioner. Thereafter, the petitioner filed an appeal before the learned Additional Sessions Judge, Fazilka whereby the learned Additional Sessions Judge, Fazilka has also upheld the conviction order and has dismissed the appeal on the same ground.

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

An argument has been raised by the learned counsel for the petitioner that the cheque was given for the purpose of security and the petitioner was able to rebut the presumption which arose in favour of the complainant. However, a perusal of the orders, evidence and the other documents available on record would show that no such plea has been taken pertaining to security cheque by the petitioner-accused. Rather there is nothing on the record to show as to how and by what material the petitioner has been able to rebut the statutory presumption. The signatures on the cheque and the issuance of the cheque have not been disputed by the petitioner. The learned counsel for the petitioner has also relied upon a

another [2013(3) SCC 86] to contend that the conviction was liable to be set aside because the loan transaction was not proved. However, a perusal of the judgment would show that in that case the accused had admitted his signatures but was able to prove that the cheque was issued by way of security and, therefore, the aforesaid judgment is distinguishable and is not applicable in the present case. The learned counsel for the petitioner has raised another argument that the complainant is habitual in filing such like of cases and has also filed one another complaint against some other person for a cheque amounting to Rs. 2,50,000/-. Such an argument of the learned counsel for the petitioner is also not sustainable in view of the fact that in case the complainant was having any right available to him under the law for filing any complaint against any person, then the same cannot become a ground for rebuttal of the presumption in the present case and, therefore, the argument raised by the learned counsel is misconceived.

In view of the aforesaid facts and circumstances, this Court is of the view that no illegality or perversity can be found in the impugned order dated 24.07.2017 passed by learned Judicial Magistrate Ist Class, Jalalabad (W) dated 24.07.2017 and order dated 06.11.2019 passed by the learned Additional Sessions Judge, Fazilka.

Consequently, finding no merit in the present petition, the same is hereby dismissed.

06.07.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No