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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.1809 of 2022 (O&M)
Date of decision : 27.10.2022

Resham Singh

....Petitioner

Versus

Baldev Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Balbir S. Jaswal, Advocate
for the petitioner.

Mr. V.K. Sandhir, Advocate
for respondent No.1.

Mr. Sarbjit S. Cheema, Dy. Advocate General, Punjab
for respondent No.2-State.

PANKAJ JAIN, J. (ORAL)

This is a revision preferred by a convict who has been awarded imprisonment of 1½ year for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act').

2. Complaint was filed after the cheque bearing No.019710 dated 15th of July, 2013 for an amount of Rs.3,30,000/- drawn on State Bank of India Branch Putlighar, Amritsar issued by the accused in favour of the complainant, was dishonoured on 29th of July, 2013 with remarks “Insufficient Funds”. The cheque was again presented which was also dishonoured for the same reason vide memo dated 18th of September, 2013. Complainant served the petitioner-accused with legal notice dated 25th of

September, 2013 through Registered A.D. post demanding the cheque amount. Admittedly, accused neither replied to the said notice nor paid the amount. After preliminary evidence, petitioner was summoned to face trial.

3. During the course of trial, petitioner-accused raised a defence w.r.t. non-enforceable legal liability at his end. Trial Court after analyzing the evidence threadbare found that the petitioner-accused has failed to make out a case to rebut statutory presumption contemplated under Section 139 of the N.I. Act and, thus, held him guilty of offence punishable under Section 138 of the N.I. Act. The matter was taken in appeal by the accused. The appeal also stands dismissed. Resultantly, the petitioner is in revision petition before this Court.

3. Mr. Jaswal while assailing the order passed by Courts below has heavily relied upon the plaint in Civil Suit No.2586 of 2012 titled as "Resham Singh vs. Baldev Singh and another" to claim that much prior to the alleged date of cheque the petitioner filed suit seeking restrain against the defendant including the complainant from misusing the blank papers/ blank stamp-papers and blank cheques. He relies upon the fact that the cheque was subject matter of the said suit. In order to hammer-forth his plea he relies upon Para No.3 of the plaint which reads as under :

> "3. That the plaintiff fell in dire need of money for domestic purpose and he approached the defendant no.1 for raising loan of Rs.1,50,000/- and the defendant no.1 advanced a loan of Rs.1,50,000/- to the plaintiff on 5.12.2010 and as security, he

> obtained the signatures of the plaintiff on certain blank papers/blank stamp papers as well as blank cheques no.019708, 019709, 019710 and 019711 of State Bank of India, ATM card and he agreed to return the same to the plaintiff on clearing the loan amount."

4. He further relies upon the order dated 8th of May, 2012 wherein the Court in light of the statement suffered by the plaintiff i.e. the petitioner-accused allowed him to withdraw the suit, recording as under :-

> "Present : Plaintiff with counsel Sh. Sandeep Bhagat Adv.
>
> The file put up today on filing application for put up the file for withdrawing the case along with power of attorney. The plaintiff and his counsel suffered a separate statement for withdrawing the case being compromise. In view of the statement, the case is dismissed as withdrawn being compromise. The file be consigned to the judicial record room.
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> Announced in open Court (Ranjeet Kaur)
> 8/5/2012 Addl. Civil Judge, Sr. Divn.,
> Amritsar."

5. Per contra, Mr. Sandhir appearing for the complainant submits that in fact at the heart of the controversy there is an agreement to sell whereby the petitioner-accused agreed to sell property in favour of the respondent-complainant. Pursuant thereto, the said amount was paid. However, the deal could not fructify and in order to discharge his legally enforceable debt/liability, accused issued the cheque in question. The compromise was entered after civil suit was preferred by the respondent-

complainant. He, thus, submits that despite having admitted his liability the petitioner before this Court is trying to blow hot and cold in the same breath and, thus, no fault can be found with the findings recorded by the Courts below holding that the cheque was issued in discharge of legally enforceable debt/liability.

6. I have heard Ld. Counsel for the parties and have gone through the records of the case.

7. The signatures on the cheque-leaf are not in dispute. The question that arises for the consideration of this Court is '*as to whether the accused raised probable defence to rebut the presumption as contemplated under Section 139 of the N.I. Act or not*?

8. It will be apposite to note down that before the Trial Court, the accused submitted that the complainant fraudulently got engaged an advocate on behalf of the accused who got the suit filed by the accused withdrawn. Shockingly before this Court Mr. Jaswal strongly relies upon the said plaint and said order whereby the suit was withdrawn. The cat is out of the bag and the falsity of the claim of the accused is written large on the record of the case. That apart Mr. Jaswal has not been able to point out any infirmity in the orders passed by the Courts below to show and demonstrate any circumstance which would warrant this Court to exercise its jurisdiction while entertaining the present revision petition.

9. In view of the discussion recorded hereinabove, no ground to

entertain the present revision petition is made out especially when the plea raised by the petitioner-accused has been found nothing but bundle of lies.

10. Consequently, the present revision petition is dismissed being without merit.

11. Pending application(s), if any, also stands dismissed.

October 27 , 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No