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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1937-2022 (O&M)
Date of Decision: 11.10.2022

RAJESH

....Petitioner(s)

Versus

ISHWAR SINGH AND ANOTHER

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sudhir Rana, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

CRM-35355-2022

For the reasons recorded in the application, the delay of 198 days in filing the present appeal is hereby condoned.

Application stands allowed.

Main case

The present is a revision petition filed by challenging the orders passed by the learned Judicial Magistrate Ist Class, Karnal dated 15/23.01.2019 whereby the petitioner in the present case has been convicted under Section 138 of the Negotiable Instruments Act, 1881 and has been directed to undergo simple imprisonment for 7 months and further to pay compensation equivalent to cheque amount for commission of offence under Section 138 of the Negotiable Instruments Act, 1881.

The challenge has also been made to the judgment of the learned Additional Sessions Judge, Karnal dated 17.02.2022, whereby the appeal filed by the petitioner has also been dismissed but with a modification that out of the total cheque amount Rs. 8,000/- which was 20% of the amount of compensation has already been deposited by the petitioner and, therefore, the petitioner was directed to pay an amount of Rs. 52,000/- instead of Rs. 60,000/-. The quantum of sentence of 7 months was upheld.

The facts of the present case are that respondent No.1 had filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 against the petitioner on the ground that the petitioner had purchased a buffalo for an amount of Rs. 60,000/- in the presence of one person namely Joginder. He did not pay the amount for the purchase of buffalo and instead had issued a cheque bearing No. 041954 dated 06.05.2017, amounting to Rs. 60,000/- in favour of the complainant-respondent No.1 drawn on Axis Bank. Thereafter, the complainant-respondent No.1 has presented the said cheque in the bank for the purpose of encashment but the same was dishonoured with the remarks 'Insufficient Funds'. Thereafter, a legal notice dated 17.07.2017 was served upon the petitioner in accordance with the provisions of the Negotiable Instruments Act, 1881 but the petitioner did not reply to the aforesaid legal notice and thereafter, the present complaint was filed before the learned Court. After leading preliminary evidence, the petitioner was summoned to face trial for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The complainant-respondent No.1 examined

himself as CW1 and tendered into evidence his own affidavit Ex. C1 wherein he had reiterated the averments made in the complaint and also tendered into evidence cheque as Ex. C2, memo as Ex. C3, legal notice as Ex. C4, registered AD as Ex. C5, acknowledgement as Ex. C6 and postal receipt as Ex. C7. Thereafter, the complainant closed his evidence on 29.11.2018. Thereafter, the statement of the petitioner-accused was recorded under Section 313 of the Code of Criminal Procedure to which he pleaded innocence and thereafter in his defence evidence, he examined DW1 namely Kuldeep Singh and thereafter closed his evidence.

Learned trial Court while considering the allegations made in the complaint came to the conclusion that the statutory presumption which has arisen in favour of respondent No.1-complainant although was rebuttable but has not been rebutted by the petitioner. The cheque was not in dispute and even the signatures on the cheque were also not in dispute. The only plea which was taken by the petitioner was that he had in fact not issued the cheque to respondent No.1-complainant but had issued the cheque to one another person namely Leela Ram as a security and the cheque has been misused by respondent No.1. The learned trial Court while considering the submissions made by the learned defence counsel observed that had it been so it has already come on record that the aforesaid Leela Ram is alive but the petitioner has failed to examine the aforesaid Leela Ram to prove his contention. Once the cheque itself has been admitted by the petitioner and the statutory presumption has arisen, then the onus was on the petitioner to have discharge his onus for rebuttal but the same has

not been done and, therefore, the petitioner was convicted by learned Judicial Magistrate Ist Class, Karnal.

The judgment of the learned Judicial Magistrate Ist Class, Karnal was assailed in appeal by the petitioner before the learned Sessions Court. The learned Additional Sessions Judge, Karnal vide order dated 17.02.2022 also discussed the entire issue and the evidence available on record and also came to the conclusion that the statutory presumption in favour of the respondent No.1 could not be rebutted by the petitioner. A slight modification was made in the order passed by learned Judicial Magistrate Ist Class, Karnal. Since the petitioner had deposited 20% of the amount to the tune of Rs.8,000/- during the pendency of the trial, the said amount of Rs. 8,000/- was set off and the order was modified that the amount of compensation would be Rs. 52,000/- and not Rs. 60,000/- since the cheque amount was Rs. 60,000/-. The sentence of 7 months was upheld.

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

The complaint which was filed was based upon issuance of a cheque of Rs.60,000/-. The complainant has proved on record the documents included cheque as Ex. C2, memo as Ex. C3, legal notice as Ex. C4, registered AD as Ex. C5, acknowledgement as Ex. C6 and postal receipt as Ex. C7. The only ground which was taken by the learned counsel for the petitioner before the learned trial Court as well as before the learned Appellate Court was that he had issued cheque not to respondent No.1 but

to another person namely Leela Ram. However, the said Leela Ram was never examined by the petitioner, although he was stated to be alive. The execution of the cheque has not been disputed and, therefore, statutory presumption has arisen in favour of respondent No.1. The presumption although was rebuttable but was not rebutted by the petitioner and onus was upon him to discharge his burden. Apart from the above, even one of the defence witness namely DW1 Kuldeep was examined and in his examination-in-chief, he also stated that the accused had purchased buffalo in February, 2017 from Leela Ram and has also stated in his cross-examination that the aforesaid Leela Ram is alive. However, such deposition made by the aforesaid defence witness would not be any avail to the petitioner in view of the fact that even if assumingly it was case of a security cheque, then again the same is also enforceable. Once the execution of the cheque and the signature thereof was not disputed, then the onus shifts upon the accused to discharge his burden that the debt was not a legally enforceable debt but the same has not been done by the petitioner.

In view of the above, this Court is of the view that there is no illegality or perversity in the orders dated 15/23.01.2019 passed by the learned Judicial Magistrate Ist Class, Karnal and also in the order dated 17.02.2022 passed by the learned Additional Sessions Judge, Karnal

Consequently, the present revision petition is hereby dismissed.

October 11, 2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No