2023:PHHC:058029

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.503 of 2023 (O&M)
Date of Decision: April 25, 2023

Aman Goyal …Petitioner

Versus

Aneet Goel …Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.K. Handa, Advocate and
Mr. Dharam Bir Bhargav, Advocate, for the petitioner.

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SUDHIR MITTAL, J.

The petitioner is the accused in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act). The complaint was filed on account of dishonour of Cheque No.049331 dated 16.11.2012 drawn on Central Bank of India, Sector 10, Panchkula for a sum of Rs.2.33 crores. The complaint succeeded and the petitioner was convicted vide judgment of conviction dated 09.02.2017. Vide order of sentence of even date, he has been sentenced to undergo RI for a period of two years and has also been made liable to pay Rs.2 crores as compensation. Appeal thereagainst has been dismissed vide judgment dated 22.12.2022.

2. The averments made in the complaint are that the accused induced the complainant to invest a sum of Rs.2 crores in the business of oil retail outlet as his wife had been allotted one by the Indian Oil Corporation. An assurance was given that if the project did not commence by the end of October, 2012, the amount would be returned. Thus, a sum of Rs.2.17 crores in all was deposited in the account of M/s Sakshi Trading Company through various transactions. Excess amount of Rs.16 lacs was returned and a sum of only Rs.2.01 crores was retained. Rs.1 lac was retained for expenses to be borne for finalization of partnership documents. As security, six different cheques were given to the complainant, the first of which was for a sum of Rs.51,12,500/- and dated 16.11.2011 and the remaining were for a total sum of Rs. 1.5 crores and dated 31.01.2012. The accused could not commence business as promised and return of money was demanded. In discharge of his liability aforementioned cheque was issued for a sum of Rs.2.33 crores, Rs.32 lacs being on account of interest. However, the same was dishonoured.

3. A perusal of the impugned judgments shows that in his statement under Section 313 Cr.P.C., the accused denied all the averments made in the complaint. The factum of payment of sum of Rs.2.17 crores in the account of M/s Sakshi Trading Company was denied. He also denied issuance of the cheque in dispute and his signature thereupon. It was stated that the complainant had obtained a cheque book of 20 leaves by forging an application and without the knowledge of the accused. FIR No.76, dated 12.06.2013 was thus got registered. Being the Chartered Accountant of the accused, he had misused his position.

4. Both the Courts below have returned concurrent findings that cheque in dispute was issued in discharge of a legally enforceable liability and that payment of a sum of Rs.2 crores had been proved. The defence has been disbelieved as FIR No.76, dated 12.06.2013 registered against the complainant for having fraudulently obtained a cheque book of the accused by forging his application has been found to be false since cancellation report had been filed. The witness from Central Bank of India has also deposed that the accused had also issued other cheques from the same cheque book which were honoured. The witness from the police has proved kalandra Ex.CW-4/B vide which proceedings under Section 182 IPC were initiated against the accused. There is also on record a report from the FSL, Madhuban opining that the signature on the cheque in dispute was genuine.

5. Learned counsel for the petitioner has argued that the findings of the Courts below are perverse. The evidence on record by way of cross-examination of the complainant has been misread and misconstrued. The complainant has failed to prove his capacity to advance such a huge sum of money. Proof of payment is also not there on record as the complainant has failed to produce any written agreement or any other record regarding the alleged investment. He has also failed to produce his income tax returns. The presumption in favour of the complainant stood rebutted but the Courts below have failed to hold so. Thus, the petition deserves to succeed. Reliance is placed upon judgments dated 21.07.2022, in CRA-AS-147-2022, ***Pamod @ Parmod Kumar vs. Geeta Devi***, dated 25.07.2022, in CRA-AS-152-2022, ***Tarsem Chand vs. Manjit Kaur***

Vashisht and dated 06.04.2022 in CRM-A-2271-MA-2017, ***Sukhdial vs. Devi Lal***.

6. The cheque in dispute has been subjected to forensic examination in an FIR got registered against the complainant by the accused viz. FIR No.76, dated 12.06.2013. The result thereof is that the signature thereupon is genuine and has not been forged. In the light of this evidence and the affidavit of the complainant, a presumption arose in favour of the complainant under Section 139 of the Act. The said presumption is rebuttable and rebuttal can be done even through preponderance of probabilities, but, the question is whether the accused has succeeded in doing so. In my considered opinion, he has not. The defence of the accused is that his cheque book had been fraudulently obtained by the complainant by forging his application. The same has been proven to be wrong by the witness from the bank who has deposed that other cheques from the same cheque book had been issued by the accused and had been honoured. Forensic examination has shown that the signature on the cheque is genuine. Thus, the accused-petitioner has not been able to create a dent in the case set up by the complainant. For this reason, the presumption has not been rebutted. In this view of the matter, the submissions that the complainant did not prove his capacity to pay a huge amount nor did he prove the actual payment thereof are meaningless.

7. The judgments relied upon by learned counsel for the petitioner are all distinguishable on facts. In each of these judgments there

was evidence on record that the cheque issued to the complainant had been misused. This is not the position in the present case.

8. The revision petition has no merit and is dismissed.

9. Pending miscellaneous applications, if any, also stand disposed of.

April 25, 2023
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned ***Yes***

Whether Reportable ***Yes***