IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:117206
CRR No.2225 of 2017 (O&M)
Reserved on: September 01, 2023
Date of Decision: September 04, 2023

Alok Shandiliya and another ...Petitioners

Versus

Devender Bhardwaj ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Manish Soni, Advocate for the petitioners.

Mr. Kamal Kumar Mor, Advocate for the respondent.

DEEPAK GUPTA, J.

In criminal complaint No.110 of 2014 titled as *"Devender Bhardwaj v. Alok Shandiliya and others"*, the two petitioners have been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the N.I. Act'), vide judgment dated 27.01.2016 passed by learned Judicial Magistrate 1st Class, Gurugram. Vide separate order dated 29.01.2016, both of them were sentenced to undergo simple imprisonment for a period of 1 month each. In addition to the same, they were also ordered to pay double of the cheque amount to the complainant as compensation to him.

2 Criminal appeal No.72 of 2016 filed by the petitioners against the aforesaid conviction and sentence has been dismissed by the Court of learned Additional Sessions Judge, Gurugram, vide judgment dated 07.06.2017.

3. Against the aforesaid concurrent findings of conviction and sentence, this revision has been filed. The Trial Court record was called.

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The same has been perused. To avoid confusion, parties shall be referred as per their status before the Trial Court.

4. According to the complainant-Devender Bhardwaj (now respondent), the two accused, namely, Alok Shandiliya and Shobha Shandiliya (petitioners herein) are running a security service in the name and style of PLN9 Security Services Pvt. Limited. Complainant was an employee with the accused. It was alleged that accused had issued cheques No.072759 for an amount of ₹27,990/- and 072760 of an amount of ₹10,696/-, both dated 20.01.2014 drawn on Axis Bank, Sector 54, Gurugram, towards the wages, to the complainant. However, on presentation, both the cheques were returned as unpaid with the remarks *"payment stopped by the drawer",* vide bank memo dated 25.01.2014. Complainant sent a legal notice dated 30.01.2014 through registered post asking the accused to pay the cheque amount within 15 days from the date of receipt of the notice. It was alleged that neither this notice was received back as undelivered nor responded to and thus, accused failed to make payment of the cheque amounts, compelling the complainant to approach the Court by filing the complaint on 26.02.2014.

5. After recording preliminary evidence, two accused were summoned to face prosecution under Section 138 of the N.I. Act, vide order dated 10.06.2014. On appearance, the accused were served notice of accusation under Section 138 of the N.I. Act, to which they pleaded not guilty and claimed trial. Complainant appeared as CW1 to prove the allegations.

6. In their respective statements recorded under Section 313 Cr.P.C., the two accused took the same stand to the effect that cheques were issued by them towards salary of the complainant, but after issuance

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of the same, they came to know about the fraud committed by the complainant with the company, inasmuch as the complainant was found to be working in another company and getting salary from that another company, while serving in the company of the accused and that is why the payment of the cheques was stopped and that an FIR was got registered against the complainant, copy of which was Ex.D2. They also relied upon a letter of intent issued by another company as Ex.D1. The two accused further admitted to have received legal notice by stating that they had replied to the same on 15.02.2014 and copy of that reply is Annexure P-6. In their defence, the two accused produced two witnesses.

7. After hearing both the sides and perusing the evidence on record, learned Trial Court was not convinced with the defence pleaded by the accused and convicted both of them as per details given earlier. Appeal against the said conviction and sentence has been dismissed.

8. It is contended by learned counsel for the petitioners that both the Courts failed to appreciate the defence pleaded by accused-petitioners, which was well proved on record, inasmuch as the payment of the cheques was stopped by the petitioners on account of the fraud having been committed by the complainant. The complainant used to disburse the salary of guards of the company. He retained the salary by forging signatures of some of the guards. Besides, complainant did not account for the amount given to him for the purchase of shoes for the guards. Not only this, he was found to have been employed in another company, namely, Skylark Securities Pvt. Ltd. since November, 2013 and on account of all these factors, FIR No.6 dated 14.01.2015 had been registered against the complainant at Police Station Sector 17/18, under Sections 406, 420, 467, 468 and 471 of IPC.

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9. Learned counsel for the petitioners also drawn attention towards the cross-examination of CW1-complainant Devender Bhardwaj, wherein he admitted the FIR against him and that he had been called in inquiry. Accused denied to have served Skylark Securities Pvt. Ltd., but admitted that Ex.D1 was issued by the said company. Learned counsel for the petitioners has further drawn attention towards testimony of DW1 Surender Yadav, who is the H.R. (Head) of Skylark Securities Pvt. Ltd. and who testified that the complainant had joined their company as Operational Manager from November, 2013 and who also proved the salary slips Ex.D-3 to D-5. It is contended that said defence had been taken by the accused at the very first opportunity, when they replied to the legal notice by sending Ex.P-6. Pointed attention is drawn towards to the fact that neither in the complaint nor in his testimony, complainant referred about the reply dated 15.02.2014 (Ex.P6) to the legal notice, which was sent by the accused, though complainant himself placed the said reply on record.

10. With all the above submissions, prayer is made for setting aside the impugned judgment of conviction and order of sentence by accepting the present petition.

11. Refuting the aforesaid contentions, it is argued by learned counsel for the respondent-complainant that all the ingredients of Section 138 of the N.I. Act are duly fulfilled, inasmuch as petitioners did not dispute their signatures on the cheques in question or that the said cheques had been issued from their account and that the same were issued towards wages of the complainant and once it is so, there is presumption under Section 139 of the N.I. Act regarding legal and enforceable liability and that petitioners-accused failed to rebut the said presumption. Learned

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counsel defended the impugned judgment of conviction and order of sentence and prayed for dismissal of the present revision petition.

12. I have considered submissions of both the sides and have perused the record carefully.

13. It is not in dispute that complainant-respondent used to be the employee of PLN9 Security Services Pvt. Ltd., owned by the two petitioners-accused. It is also not in dispute that the two cheques were issued by the accused towards wages of the complainant and both the cheques on presentation have been dishonoured on account of the fact that payment thereof was stopped by the drawer.

14. However, neither in the complaint nor in his affidavit Ex.CW1/A, complainant disclosed as to the period of the wages for which the cheques in question were issued. Petitioners-accused have not disputed that they received the legal notice dated 30.01.2014 (Ex.P-4). However, it is the specific stand of the accused that they had sent reply dated 15.02.2014 to the said legal notice, which is available on the Trial Court record as Ex.P-6.

15. Interestingly, though the complainant neither referred in his complaint about the said reply dated 15.02.2014 to have been received by him from the accused nor referred about the same in his affidavit Ex.PW1/6, but it is on the date of his deposition on 05.05.2014 that complainant himself placed it on record as Ex.P-6.

16. The aforesaid reply Ex.P-6 discloses the clear stand taken by the accused, the relevant portion of which is as under: -

> "1. That you have worked in the company of my office and it is a admitted fact and that you have drawn salary from the same, but it is pertinent to mention here that you were given responsibility of managing clients in Delhi NCR and as part

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of your responsibility you have to disburse wages at site each month and manage day to day affairs of these sites.

2. That of period of August 213 to Jan 2014, you were given cash for disbursement of wages to staff on field, out of which you have not accounted for nor returned an amount of 51886/- till date to my clients, along with you were also an amount of Rs.22611/-, Twenty-two thousand six hundred and eleven for purchase of shoes for the guards, which had neither been accounted for nor the shoes distributed to guards.

3. That 210 sets of uniforms with a total cost of approximately Rs. Two lacs had been taken by you. These are neither returned or accounted for by you till date.

4. That my clients have received written complaints from 6 employees as of now against you, regarding non receiving of their monthly wages and that you have misappropriated the amount of their salary which was given to you by my client and that you have forged the signatures on salary sheet and did not return the amount of guards salary to my clients nor received by them.

5. That it is also pertinent to mention here that you have not been coming to office regularly, on investigation my client discovered that you have joined another company on 31st October 2013. All this time, you have been cheating my client, as you were working for two employers at the same time, its a criminal offence and that after coming to know about the above said factum my clients have intentionally stopped the payment of your cheques, as you are not liable for the same.

Reply Parawise:

1. xxxxxxxx

2. That this para of notice is true and correct to an extent, but it is pertinent to mention here that you have joined another company on 31.10.2013 and that's why my client have stopped the payment of above said cheques, after coming to know about your regular absence in the office during

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> November and December, 2013, as at that time my clients were travelling and this fact of your absence was not in the knowledge of my clients and inadvertently they have **issued the cheque for the salary of Nov & Dec, 2013** for which your are not liable at all"

17. Thus, as per the reply to the legal notice sent by the accused, the cheques were issued for the salary of complainant for the period of November and December, 2013. It had been alleged that complainant had not accounted for not returned an amount of ₹51,886/- towards wages of the staff given to him for disbursement nor had accounted for ₹22,611/- given to him for purchase of shoes for the guards nor had accounted for 210 sets of uniforms costing of approximately ₹2 lacs. Apart from this, it had been alleged that complainant was found to be working with another company since 31.10.2013.

18. There is absolutely nothing on record to show that complainant ever responded to the above said reply of the legal notice to refute the allegations contained therein against him.

19. During his cross-examination, CW1 complainant Devender Bhardwaj though initially denied that as per his job profile, he used to disburse the salary of the staff, but admitted that once or twice, he had distributed the salary of the staff. He admitted lodging of the FIR Ex.D2 against him and that he had joined the inquiry conducted by the Economic Offences Wing. Though, he admitted to have received the appointment letter Ex.D1 from Skylark Securities Pvt. Ltd., but stated that he did not accept the offer. He flatly denied to have worked for Skylark Securities Pvt. Ltd. He also denied to have ever received any payment in 2013 from Skylark Securities Pvt. Ltd.

20. The entire testimony of the complainant to the above effect is

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falsified by the oral as well as documentary evidence produced by the accused-petitioners. DW1-Surender Yadav is the Human Resources (Head) for Skylark Securities Pvt. Ltd., who not only proved the letter of intent (Ex.D1) issued by his company to the complainant Devender Bhardwaj, but further testified that said Devender Bhardwaj had joined his company in November, 2013 itself. He also proved on record the salary slips Ex.D3 to D5. During cross-examination, DW1 disclosed that complainant had continuously done job in his company ever since 1st November, 2013 and during that time, he was not serving in any other company. DW2 ASI Jaipal was the Investigating Officer of the FIR No.6 dated 14.01.2013 (Ex.D2) registered against the complainant and testified that as per the investigation conducted by him, complainant had forged the receipts of salary of certain guards regarding disbursement of the salary and had embezzled the amount. He proved on record the statement of one of such guard as Mark D2.

21. The testimony of DW1 Surender Yadav, the official of the Skylark Securities Pvt. Ltd, to be read with salary slips Ex.D3 to D5 prove it beyond doubt that respondent-complainant was serving in the said Skylark Securities Pvt. Ltd. ever since November, 2013. As per the defence pleaded by the accused, the cheques in question had been issued for the salary of the complainant for the period November and December, 2013 and it is after coming to know about the fact that complainant was serving in another company and was absenting from the company of the accused-petitioners that the payment of the cheques was stopped.

22. In view of the overwhelming evidence produced at record by the accused-petitioners, their conviction on the part of the Trial Court and upholding of the same by the Appellate Court is absolutely unjustified.

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No doubt, presumption under Section 139 of the N.I. Act was available in favour of the complainant once the signatures on the cheques were admitted and that the cheques were issued for a legal and enforceable debt or liability, but the accused-petitioners were justified in their action of stopping the payment, inasmuch as the cheques were issued towards salary for the period, for which the complainant did not serve the company of the accused-petitioners and rather, served another company Skylark Securities Pvt. Ltd. Besides, complainant was found to have embezzled the amount payable for the salary of the guards regarding which FIR Ex.D2 was lodged against him.

23. In view of the entire discussion as above, the impugned judgment of conviction and order of sentence as recorded by the Courts below are set aside. The petitioners stand acquitted of the charges. The present revision petition is hereby allowed. The amount of ₹30,000/- paid by the petitioners to the respondent-complainant through his counsel, as reflected in the order dated 01.08.2017 of this court, is directed to be refunded by the respondent-complainant to the petitioners within 15 days from today.

September 04, 2023 **(DEEPAK GUPTA)**
sarita **JUDGE**

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

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