HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-3113-2017

Date of Decision: 14.02.2023

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Kashmir Singh ... Petitioner

VS.

State of Punjab ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. AS Barnala, Advocate for the petitioner

Mr. Mohit Chaudhary, AAG Punjab

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<u>Sandeep Moudgil, J.</u>

This criminal revision petition has been preferred by the petitioner against the judgment of conviction as well as order of sentence dated 04.06.2014 passed by SDJM, Phillaur vide which the petitioner has been convicted and sentenced to undergo RI for a period of one year and pay compensation of Rs.2000/- under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'the NI Act') as well as the impugned judgment dated 20.07.2017 passed by Addl. Sessions Judge, Jalandhar vide which the appeal filed by the petitioner has been dismissed.

Learned counsel for the petitioner has contended that both the courts below have not considered Ex.D15 which is a receipt dated 11.06.2003, as per which, the entire outstanding amount towards the complainanthas been paid which is further fortified by the examination of DW1 Rampal deed writer and also the documents Ex.D2 to Ex.D14.

The courts below have gravely erred while deciding the objections brought forth regarding non-compliance of the procedure laid down in ***<u>Dr.Pardeep Mohan Bay vs. Manguel Corlos Bias 2001(3) RCR (Crl) 1</u>***. The courts below, on the one hand, have considered the power of attorney holder of the complainant did appear as PW1 and also tendered his affidavit in his examination in chief and further that he had also been cross-examined by the counsel for the petitioner/defendant and this objection has merely been given due consideration because at the time, when the cross-examination was conducted, no objection was raised by the counsel concerned, therefore, the benefit could not be extended to the petitioner, which itself is against law and the principles of natural justice.

The fact regarding the cheques in question being time barred has also not been given weight by the courts below. The loan was taken on 11.06.2003 and receipt Ex.D15 had not been given any consideration by courts below and compromise Ex.PC which as per the story of the prosecution bears the signatures of the petitioner and the complainantas well as the witnesses have not been proved. It is also alleged that the question of entering into compromise does not arise as on the date of the alleged compromise, the civil litigation was already pending between the parties and the matter was sub judice before the civil court and as such the complaint is time barred and is not maintainable.

The courts below have also not considered the fact that ink used for the rest of the writing on the cheque is different from the ink which has been used for signatures, which further clarifies that the date of issuane of the cheque being mentioned as 25.03.2009 and further an undertaking of the same being presented for clearance on 26.03.2009 too is a concocted story and the same cannot be relied upon.

As far as the argument of the counsel for the petitioner that the cheque in question is time barred debt, admittedly, the petitioner has taken the loan of Rs.2,00,000/- from the complainant on 11.6.2003. It has been pleaded that as per receipt dated 9.3.2006 Ex-D15 the whole loan amount was returned to the complainant, but there is a compromise Ex-PC which bears the signatures of the petitioner and the complainant and the other witnesses. An amount of Rs.4,87,000/- was outstanding towards petitioner on 30.11.2008, but it has been compromised that the petitioner will make the payment of Rs.3,50,000/-, upon which both the parties were agreed and in lieu of that, the cheque bearing No.077452 dated 25.3.2009 (Ex-C3) was issued. The amount outstanding towards the petitioner on dated 30.11.2008 and the cheque issued on dated 25.3.2009 (Ex-C3). In this way, the cheque in question issued to the complainant is not time barred debt. So the reliance Sujies Benefits Fund Ltd. Vs. H. Sultan, 2016(5) R.C.R. (Criminal) 683 (Madras); and Som Nath Vs. Mukesh Kumar, 2015(8) R.C.R. (Criminal) 599 (P&H) placed by the counsel for the petitioner are not applicable.

Secondly, while the signatures are admitted and when it has been alleged by the petitioner that signatures are with the different pen and the cheque filled with the different pen, but no handwriting expert has been examined by the petitioner to prove this fact. The argument of the counsel for the petitioner that the compromise Ex.PC has not been proved on record by brought into witness box any marginal witness of this alleged compromise, is concerned, CW1 Sodhi Ram stepped into witness box and he, in his cross-examination, produced the original compromise Ex.PC of dated 30.11.2008 and as per agreement, the amount of Rs.3,50,000/- was agreed between the parties and to discharge that liability, the cheque in question was issued, which bears the signatures of both the parties. The signatures on the compromise Ex.PC are not disputed. There is no explanation on the part of the petitioner that how his signatures appeared on compromise Ex.PC. A compromise had been arrived between the parties, upon which the petitioner issued the cheque in question Ex-C2 for an amount of Rs.3,50,000/- to discharge his debt, which has been dishonoured by the bank vide memos Ex-C4 and Ex-C5.

In view of the above findings returned by the courts below, this Court has no believe to disbelieve the same as there is nothing erroneous in the impugned judgment and order.

Accordingly, this petition is dismissed.

14.02.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*