



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Criminal Revision No.57 of 2024 (O&M)
Date of decision: July 11th, 2024

Prem Chand

.....Petitioner

Versus

Harbhajhan Lal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Suresh Kumar Aneja, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

Petitioner is impugned the judgment of conviction and order of sentence dated 12.12.2016 passed by learned Judicial Magistrate 1st Class, Fazilka, whereby the petitioner has been sentenced to undergo R.I. for a period of one year and to pay a fine of ₹5,000/- under Sections 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act'), which was later upheld by learned Additional Sessions Judge, Fazilka, vide judgment dated 01.11.2023.

2. The case in brief as outlined in the complaint, is that the petitioner-accused had financial dealings with M/s. Das Lal Agency (for short 'commission agency'), owned by the complainant. The petitioner maintained an account through which he periodically obtained advances from the commission agency for his needs and sold his crops through the aforementioned complainant-agency.

An outstanding amount had accumulated against him. To settle this legal liability, the petitioner issued a cheque dated 26.08.2013 for a

sum of ₹7,80,938/-. However, the cheque was dishonoured on 26.08.2013. Subsequently, a legal notice was sent by the complainant to the petitioner on 19.09.2013. Petitioner neither responded to the notice nor made the payment, leading to the filing of the complaint in question.

3. Learned counsel for the petitioner is challenging the order dated 12.12.2016 passed by the learned trial Court, which was affirmed by the learned Appellate Court also. It has been argued that both the Courts failed to appreciate that the complainant was unsuccessful in proving his case by way of any cogent much less convincing evidence. Furthermore, it has been asserted that both the Courts erred in ignoring that the cheque in question was not issued by the petitioner to discharge any legal debt or liability, but rather it was a blank signed security cheque taken by the complainant and subsequently misused, as it had not been returned to the petitioner. Learned counsel further submitted that the misuse of the security cheque was supported by sufficient convincing evidence which was overlooked by both the Courts. Additionally, the Courts also failed to appreciate that the petitioner had successfully rebutted the presumption under Sections 118 and 119 of the N.I. Act, asserting that the cheque in question was never issued, and a false and fabricated case had been planted by the complainant upon the petitioner. Still further, learned counsel argued that entries made in the *bahi* would not attract the provisions of the N.I. Act, and the entries from 04.04.2006 to 21.12.2010 were highly time barred. Since issuing a cheque for a time barred debt does not create a legal liability the petitioner deserved to be acquitted.

4. Based on the evidence and other material on record, the

trial Court convicted the petitioner under Section 138 of the N.I. Act vide judgment dated 12.12.2016, sentencing him to undergo rigorous imprisonment for one year and a fine of ₹5,000/-. The appeal preferred by the petitioner against the aforementioned judgment was also dismissed by the learned Appellate Court by judgment dated 01.11.2023. Hence, the present revision petition.

5. I have heard learned counsel for the petitioner and perused the relevant material on record.

6. An examination of the material on record reveals that the complainant-CW-1 while reiterating the allegations levelled in his complaint, provided detailed accounts of all the transactions between himself and the petitioner. In his evidence, the relevant entries in the account books were duly substantiated. Copies of these debit and credit entries were tendered as Exhibits C1 to C383. The aforesaid entries in the day book and cashbook are corroborated by the ledger entries, which were exhibited as Exhibits C384 to C391. Additionally, the complainant also provided copies of balance sheets for the relevant period as Exhibits C392 to C400.

7. The relevant exhibits and evidence led were further supported by the testimony of CW-2 Janak Raj, the Accountant, who recorded the entry in the *bahi* regarding the outstanding amount of ₹6 lakh, acknowledged by the petitioner under his signatures on 01.06.2012. Furthermore, evidence revealed that the petitioner continued to obtain credit amounts on various dates, culminating in a liability equivalent to the cheque amount as of 21.03.2013. As of 26.08.2013, there was an outstanding balance of ₹7,80,938.50, including interest, against the petitioner. To discharge this liability, the

cheque in question was issued, which was subsequently dishonoured.

8. The petitioner has argued that the cheque in question is a fabricated document and there was no outstanding amount or liability against him at that time. However, no cogent evidence was presented to support this claim. It is difficult to digest that no effort would have been made by the petitioner to retrieve the alleged security cheque from the complainant, nor did the petitioner provide any evidence indicating that he had asked for its return or that the complainant had refused to hand over the security cheque. Furthermore, the assertion of the petitioner that the provisions of the Negotiable Instruments Act do not apply to the entries in the *bahi* is untenable. The case is not solely based on the entries but on the cheque issued by the petitioner to discharge his legal liability, which was subsequently dishonoured. Pertinently, the petitioner has not disputed his signatures on the said cheque.

9. This Court has no hesitation in affirming the impugned orders dated 12.12.2016 and 01.11.2023 passed by the learned trial Court and the learned Appellate Court respectively, which held that the complainant successfully proved his case beyond reasonable doubt. There is no perversity in their findings and the same are based on a correct appreciation of the evidence available on record.

10. The complainant provided compelling evidence satisfying all the essential ingredients of Section 138 of the N.I. Act. On the other hand, the petitioner has failed miserably to rebut the case of the complainant. In view of the overwhelming evidence presented by the complainant during the trial, this Court finds no reason to interfere with the impugned orders and set them aside.

11. The instant petition, therefore, stands dismissed.

12. Pending application, if any, stands disposed of.

July 11th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No