225 **2024:PHHC:151270**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-23166-2016 In/And
CRM-A-1367-MA-2016
RESERVED ON: 12.08.2024
PRONOUNCEMENT ON : 13.11.2024

SUBHASH CHANDER

.....APPELLANT

VERSUS

JAGDISH RAI AND ORS

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kuldeep khandewal, Advocate
for the applicant/appellant.

Mr. T.C. Dhanwal, Advocate
for respondents No.1 to 4.

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SANDEEP MOUDGIL, J (ORAL)

CRM-23166-2016

Delay condoned.

Application Allowed

CRM-A-1367-MA-2016

1. The appeal under Section 378(4) CrPC has been filed by the appellant seeking leave to appeal against the judgment dated 09.03.2016 passed by Judicial Magistrate, First class, Hisar(in short, 'trial court') vide which respondent has been acquitted under section 138 of Negotiable Instruments Act 1881, (in short, 'the NI Act'), on the ground that the appellant has miserably failed to bring home the guilt of the respondent-accused.

2. Briefly put forth, the facts of the case are that the appellant became member of the respondent no.4 society I.e Hisar Urban Area Cooperative Non-Agriculture thrift and credit society limited, 299 Urban estate-II, Hisar vide membership no. 177 wherein it has been alleged that the appellant had borrowed a sum of Rs.15,000/- from the respondent no.4 society while giving four blank signed cheques as a security to Respondent no. 1 i.e the Secretary of the society and simultaneously Respondent no.1 and Respondent no.3 i.e President of the society had obtained appellant's signatures on few blank papers. Further, it is alleged that the appellant had been repaying the amount in installments from time to time which is evident from Ex. P2 to Ex. P35 but the respondents use to mention the due amount on higher side only to extort more money from the appellant and on raising this objection, became a victim of their criminal conspiracy wherein the respondents with *mala fide* intention got dishonoured the cheques bearing no. 546081 and 546082 dated 28.01.2006 for an amount of 1,30,000/- each which led to filing of complaint against the appellant under section 138 of Negotiable Instruments Act, 1881 wherein he got acquitted vide judgment dated 09.12.2014.

Howerever, on 05.09.2009, during the trial proceedings of the above mentioned complaint cases, the witnesses were summoned from the respondent society who produced the copies of receipts i.e Ex. D2 to Ex. D35 of the installment paid by the appellant which were duly issued by Respondnet no. 2 I.e the clerk on behalf of Respondent no.4 society and thereafter the appellant also produced the original receipts as Ex. D36 to Ex. D72. By virtue of receipts Ex. D2 to D35, the respondnets had adjusted the installment amount received from the appellant into the account of some other person which compelled him to file a complaint against the respondents under sections 193, 406, 420, 465, 466, 468, 471, 477-A, 120-B, IPC Police Station civil lines Hisar vide judgment dated 09.03.2016, they were acquitted,. Hence, the present appeal.

3. Counsel for the appellant contends that the trial court failed to appreciate the evidence produced as E. D7 to Ex.D10, that the alleged account lodger maintained by the respondent society does not bear the name of the society as its head note therefore is not reliable.

4. He further contends that the trial court has wrongly admitted the contention of the respondent society wherein it is stated that the respondent society had replaced the membership numbers with the account numbers in order to rule out any confusion.

5. He vehemently argues that the trial court has failed to acknowledge that Respondent no. 1 to 3 are family members to each other and running the above said society in their own residence which gives them privilege to tamper with any document for their own convenience.

6. Per contra, counsel for the respondents contends that the appellant had taken a false stand of borrowing only Rs. 15000/- whereas he had borrowed a loan of Rs. 64000/- which is evident from the cheques Ex. D13 to Ex. D16 which were duly encashed by the appellant. He further contends that ledger book is a normal practice of maintaining the record of the society therefore no illegality can be found in the said record. Rather, the complaint case filed by the appellant was only a counter blast to the two complaints against him under section 138 of Negotiable Instruments Act, 1881.

7. Having heard learned counsels for the respective parties and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

8. It is evident from the record in hand, that by virtue of Ex. D23, the appellant had notice of his serial no.183 in the register wherein he tried to reflect that the same same document stands false since he it mentions his name as Subhash Chander whereas he writes his name as Subhash Jangra which is a clear cut attempt to twist the existing fact only to play fraud with the court. Further, the appellant never raised any objection over this issue meaning thereby, the testimony of PW1 stands corroborated on the point of change of membership numbers with account numbers.

9. In the instant case, the evidence on record does not show that any entrustment of money was made by the appellant to the respondents, rather it was only a repayment of loan of the money which actually belonged to the respondents. Moreso, the element of misappropriation is also absent as the payments made by the appellant had been credited to his loan account no. 183 added with the fact that the appellant had not stated specifically the amount deposited by him with the respondents and the amount adjusted by the respondents in some other account.

10. The allegation against the respondents qua section 420 IPC does not stand proved by the appellant since he failed to establish as to when he deposited the instalment amount and the respondents has a dishonest intention at the very inception of the transaction which is *sine qua non* to attract section 420 IPC and the same finds its support in the judgment of this court in ***"Davinder Kaur vs State of Punjab and ors 2006(3) RCR Criminal 190"*** wherein it has been held that:-

> *"the dishonest and fraudulent intention must be in existence at the very inception of the transaction"*

11. Also, in ***" Parminder Kaur vs State of U.P and another 2009(4) RCR Criminal 844"*** the Apex court while throwing light on the aforementioned issue has held that:-

> "*If the document is to be altered it has to be for some gain or such objective on the part of the accused. Merely, changing a document does not make it a false document."*

12. In the instant case, the mentioning of account no. 183 and ledger folio number is not an altercation of the document for the purpose of any gain. Therefore, the appellant has miserably failed to prove its case on the fact that the account no. 183 does not pertain to him and secondly,by the entry made over the receipts either some prejudice has been caused to him or some wrongful gain was received by the respondents.

13. In the light of the above, taking into consideration the record in hand coupled with the settled proposition of law in Devinder's case(supra), this Court is of the considered view that no fault can be found with the judgment passed by the trial court dated 09.03.2016 and as such , having no merit, the appeal stands dismissed.

14. Accordingly, ordered.

(SANDEEP MOUDGIL)
13-11-2024 **JUDGE**

Poonam Negi

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*