HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-6599-2019 (O&M)

Date of Decision: 11.12.2024

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Ishwar Dutt ... Petitioner

VS.

State of Haryana & Anr. ... Respondents

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CRM-M-6620-2019 (O&M)

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Ishwar Dutt ... Petitioner

VS.

State of Haryana & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Kamal Sharma, Advocate for the petitioner

Mr. BS Virk, Sr.DAG Haryana

Mr. Kulbhushan Sharma, Advocate for respondent No.2

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Sandeep Moudgil, J.

(1). The issues involved in both the above-cited petitions are identical and as such, the same are being disposed of vide a common order treating CRM-M-6599-2019 as the lead case.

(2). Facts in nutshell needs to be recapitulated. Petitioner-Ishwar Dutt and the proprietor of respondent No.2 – Ramesh Kumar entered into partnership deed (Annexure P1) in business of purchase and re-sale of tractors under the name of M/s Hari Om Tractors, Safidon since 03.12.2004 which continued till May, 2009 when their partnership came to be dissolved vide deed dated 31.05.2009 (Annexure P2) wherein accounts and liabilities were settled. However, respondent No.2, allegedly, received pending payment of Rs.12 lakhs from customer and thereafter started his own firm, namely, M/s Shri Ram Tractors, Pillukhera. Thereafter, both the parties in order to settled dispute arrived at a compromise in terms whereof, respondent No.2 gave a cheque of

Rs.10 lakhs to the petitioner which was duly encashed but the said amount could not be withdrawn as respondent No.2 had lodged a complaint regarding theft of his cheque upon the petitioner. In the meanwhile, respondent No.2 filed an application before CJM, Jind for releasing the amount of Rs.10 lakhs lying in the account of the petitioner and the said application was allowed vide order dated 09.07.2015, admittedly without hearing the petitioner, who was confined in jail at the relevant time.

(3). On an appeal filed by the petitioner on 21.08.2017, the order dated 09.07.2015 was set aside with a direction to the trial court to pass fresh order on superdari after giving opportunity to the petitioner as well. Thereafter, the CJM, Jind, vide its order dated 02.04.2018 (Annexure P4), after considering the petitioner's reply dated 18.07.2017 and while observing that there is no proof available regarding ownership of the money in question, directed respondent No.2 to deposit back Rs.10 lakhs with the Court on or before 14.05.2018 to be released to the true owner at the time of final adjudication of the case.

(4). Aggrieved by the said order, both the parties filed revision petitions before Addl. Sessions Judge, Jind wherein the petitioner sought a direction to release the amount in his favour on superdari. However, the revisional court, vide common impugned judgment dated 18.08.2018 accepted the revision petition of respondent No.2 and held that respondent No.2-revisionist is fully entitled to Rs.10 lakhs with him till the decision of the criminal case pending before the trial court. As regards revision petition filed by the petitioner, the same was dismissed with a direction to the trial court to pass a fresh order. Hence, this petition.

(5). The contention raised on behalf of the petitioner is that cheque in question was issued by respondent No.2 in favour of the petitioner which was honoured and Rs.10 lakhs were even deposited in the account of the petitioner which is an admitted position of fact and record and that being so, the presumption of liability after issuance of disputed cheque lies with respondent No.2 and in the current scenario, the petitioner has got the first right on the amount in dispute till the final decision of the case before the trial court.

(6). It is argued that the revisional court failed to consider the fact that a cheque of Rs.10 lakhs was given by respondent No.2 to the petitioner towards final settlement arrived at between them as they were partners in the joint firm which was subsequently mutually dissolved. He urged that there is no *mens rea* attributed in the FIR on the part of the petitioner at the time of presentation of cheque in the Bank.

(7). Reply dated 14.10.2019 has been filed by the respondent-State wherein it has been averred that after conclusion of investigation, challan in the case was prepared on 07.07.2015 and was presented in the Court on 17.07.2015. It is further submitted that the impugned direction by the revisional court cannot be faulted with as there are ample evidence on file on the basis of which the petitioner could be prosecuted for commission of offence under Section 379/420 IPC.

(8). Learned counsel for respondent No.2 submits that the respondent No.2/complainant got lodged FIR No.319 dated 06.05.2015 against the petitioner and thereafter on his application, the amount of Rs.10 lakhs were released by the trial court on superdari vide its order dated 09.07.2015 and revisional court has rightly upheld the said order and directed the trial court not to direct the respondent No.2 to deposit Rs.10 lakhs in the Court till the decision of the case holding him to be fully entitled to retain the said amount till such time.

(9). Heard learned counsel for the parties.

(10). Except oral averments made by the parties, there is no appreciation of any documentary evidence on record either by the revisional court or by the trial court to suggest that the amount of Rs.10 lakh belonged to the petitioner or the respondent No.2. As per the facts noticed above, it can be assumed that the petitioner and respondent No.2 were in joint venture which could not last long and was ultimately dissolved on 31.05.2009 but the respondent No.2 is stated to have obtained cash amount in contravention of the dissolution deed and when the petitioner came to know about such usurpation made by respondent No.2, a compromise was effected and in terms whereof, respondent No.2 handed over a cheque of Rs.10 lakhs. However, respondent No.2 later on denounced the petitioner of having cheat and stolen the cheque and thereafter the whole dispute has stretched.

(11). The trial court vide order dated 09.07.2015, at the very first instance, allowed the application of respondent No.2 for releasing the amount of Rs.10 lakhs on supedari. The trial court erroneously came to the conclusion that the amount pertained to the firm of the respondent No.2 being proprietor of the firm without ascertaining the fact that the cheque was actually given by the respondent No.2 to the petitioner. Evidently, no opportunity was given to the petitioner to respond to the allegations of the respondent No.2 which was against the principle of natural justice.

(12). That apart, the revisional court exceeded its jurisdiction inasmuch as the revisional courts are competent to call for and examine the record of any proceeding before any inferior criminal court within their jurisdiction for the purpose of satisfying themselves as to the correctness, legality or propriety of any finding, sentence or order and the regularity of any proceeding before such inferior court. However, a perusal of the impugned order dated 18.08.2018 (Annexure P5) nowhere reveals as to how it came to the conclusion that the respondent No.2 is entitled to retain Rs.10 lakhs or for that matter, the petitioner was not the owner of the said amount when it was specifically the petitioner's case before the trial court and other superior courts that the respondent No.2 himself had issued cheque of Rs.10 lakhs to settled the liability towards him.

(13). When the parties have rival and contesting claims, it is incumbent upon the Courts to deal with such contentions on the basis of evidence and material documents placed on record and arrived at a logical conclusion which per se cannot be termed as perverse, illegal and arbitrary. Without having undertaken such an exercise, it is unfair and dubious to hold that respondent No.2 is entitled to keep the disputed amount. This fact has been aptly appreciated by the trial court vide its subsequent order dated 02.04.2018 wherein the fact that there is no proof of ownership regarding the assertions made by the parties and since it being a matter of evidentiary appreciation to see as to who the said money belongs.

(14). The proposition of law in matters involving revisional jurisdiction is well settled inasmuch as the revisional powers are discretionary with the Court to see that justice is done in accordance with the principles of criminal jurisprudence and such powers are required to be exercised so that there is no abuse of power by the court and mere oral assertion or suspicion would not be a ground to interfere. The powers of revisional courts are crucial for maintaining judicial integrity and ensuring that justice is served. They provide a mechanism for oversight while respecting the autonomy of lower courts, allowing higher courts to intervene only when necessary to prevent miscarriages of justice. In such circumstances, the order dated 18.08.2018 cannot be allowed to sustain and the subsequent order dated 02.04.2018 (Annexure P4) vide which the amount of Rs.10 lakhs has been ordered to be kept in the safe custody of court is deserves to be upheld.

(15). Accordingly, this petition is allowed and the order dated 18.08.2018 is hereby set aside and it is directed that the trial court order dated 02.04.2018 shall prevail and till the time the Court decides on the question of true ownership of the cheque amount of Rs.10 lakhs, the said amount is directed to be kept in the custody of the court in the form of an FDR which shall be released only after ascertaining its true owner. The trial court shall proceed with the trial uninfluenced with the observations of this Court.

(16). Disposed of in above terms.

11.12.2024
V.Vishal

(Sandeep Moudgil)
Judge

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