

2024:PHHC:159884



255 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1874-2014 (O&M)
RESERVED ON: 02.09.2024
PRONOUNCE ON: 29.11.2024

ASHWANI KUMAR SETHI

.....PETITIONER

VERSUS

ARUN KUMAR MALHOTRA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Nandita Verma, Advocate for
Mr. Anil Sharma, Advocate
for the petitioner.

None for the respondent.

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SANDEEP MOUDGIL, J

1. The present revision petition has been preferred against the impugned judgment dated 06.05.2014 passed by learned Additional Sessions Judge, Chandigarh vide which the judgment and order dated 09.04.2013 passed by Judicial Magistrate, Ist Class, Chandigarh have been affirmed, whereby the petitioner has been sentenced to undergo rigorous imprisonment for a period of one year for commissioning of offence under Section 138 of Negotiable Instruments Act, 188 and further directed to pay compensation to the complainant/respondent to the tune of Rs.10.50 lacs.

2. The factual matrix of the present case is that a complaint under Section 138 of Negotiable Instruments Act, 1881, was preferred in January 2008, wherein it

is alleged that the petitioner-accused offered to sell 30 bighas of land in District Sirmaur for Rs.40,00,000/-. The complainant paid Rs. 11,00,000/- in cash as a token, but the petitioner-accused failed to execute the sale deed. Later, the accused paid Rs.2,00,000/- in installments and issued a cheque for the remaining amount, which bounced due to 'insufficient funds'. Despite a legal notice, the accused failed to make payment, prompting the complainant to file the present complaint.

3. Counsel for the petitioner argues that the petitioner was falsely implicated. The trial court ignored crucial aspects and erred in convicting the petitioner. The petitioner owed no legal debt to the complainant. In fact, the complainant misused cheques in connivance with the wife of the petitioner. It is further argued that the alleged sale agreement was not presented as evidence, making the complainant's version doubtful. The presumption under Section 118 of the Negotiable Instruments Act was rebutted by the petitioner. There is no evidence of the financial capacity of the complainant to pay the amount. The complainant did not show the payment in their income tax returns, making their version questionable. The trial court ignored the fact that only Himachal Pradesh residents can purchase land there, making the sale agreement story unbelievable

4. I have heard learned counsel for the petitioner and gone through the record.

5. This Court found some inconsistencies that cast doubt on the petitioner's account. In his deposition, the complainant said unequivocally that the accused received the money as part of an unfulfilled property sale. The agreement to sell that was made between the petitioner-accused and the respondent-complainant is also mentioned. However, the signatures on the disputed cheque are undeniable, despite the argument raised by learned counsel for the petitioner-

accused that the agreement to sell was not recorded. Furthermore, the property transaction was acknowledged by the petitioner. Once the signatures on the cheque was admitted, then it was for the respondent-complainant to explain as to how and in what manner the cheque came in possession of the petitioner. It cannot be assumed that there was no agreement between the parties based solely on the claim that a non-Himachal resident could not purchase property there, implying that there could not have been a deal to sell land in HP and that the plea is false. The respondent-complainant's financial capabilities was also questioned by the petitioner-accused, but there is no evidence on the record that the complainant lacked the funds to make the payment. Furthermore, it was the responsibility of the petitioner-accused to demonstrate that the respondent-complainant had the financial means to extend such a large sum, but the respondent-complainant was not even questioned about this during his cross-examination, and he has not contested his signatures on the cheque.

6. The scope of revisional jurisdiction of the Courts has been discussed by Hon'ble Supreme Court in “***State of Kerala vs Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 425***” wherein it is held as under:-

“the revisional jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned Judgment of the High Court from the aforesaid stand point,

we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter the impugned Judgment of the High Court is wholly unsustainable in law and we, accordingly set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence. In view of the order in this appeal, no further order is necessary in SLP(Criminal) No. 1466/94.

7. On perusal of the judgments passed by both the Courts below, this Court is of the considered view that the said judgments are based upon the proper appreciation of the evidence led by the parties. The conviction, as has been culled out by the trial Court which was subsequently upheld by the Appellate Court, cannot be said to be faulty, requiring any interference by this Court.
8. Accordingly, the present criminal revision petition stands declined.
9. Dismissed.

29.11.2024

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No