217-5 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37892-2021
Date of decision: 26.02.2024

BHUPINDER SINGH

...PETITIONER

V/S

VIRENDER AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parminder Singh, Advocate for the petitioner.

Mr. Ravinder Rana, Advocate,
Mr. J.S Rana, Advocate with
Mr. Hardeep Saini, Advocate for the respondents.

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HARPREET SINGH BRAR J. (ORAL)

The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of the impugned order dated 09.10.2018 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Karnal in criminal complaint No.100/2013 filed under Sections 420, 467, 468, 471, 323, 506 of IPC vide which the respondents-accused were discharged as well as the impugned order dated 13.11.2019 (Annexure P-5) passed by learned Additional Sessions Judge, Karnal vide which the revision petition No.37/2017 filed by the petitioner was dismissed.

FACTUAL MATRIX

2. The facts, in brief, are that the petitioner-complainant had business relations with the respondents-accused as he used to sell his agricultural produce to the respondents. Where, respondent no.1 is the sole proprietor of the firm namely 'M/s Ram Dhari Virender Comission Agent' involved in the business of sale and purchase of agricultural produce, respondent no.2 is the current Munim (clerk) and respondent no.3 was the previous Munim (clerk) of the said firm. Allegedly, respondent no.1, by taking undue advantage of the existing business relation, induced the petitioner to open a bank account in his

name on 18/19.10.2006 with Punjab National Bank, Branch Indri and even identified the petitioner at the time of opening of the said account. But respondent no.1 induced the petitioner to sign all the cheques in the cheque book issued to the petitioner qua the said bank account and even got the petitioner to hand over the said cheque book as well as the pass-book to him. Since the day of opening, the petitioner never deposited or withdrew money from the said account and it was always operated by respondent no.1, who also got another cheque book issued from the bank on the basis of the signed voucher for issuance of cheque book attached with the last page of the previous cheque-book. Thereupon, in the month of March2010, the petitioner received two registered legal notices issued by respondent no.1, wherein it was alleged that the petitioner in discharge of his legal debt had issued cheque no.195853 dated 28.11.2009 amounting to Rs.10,00,000/- in favour of respondent no.1 and at the time of issuing the cheque the petitioner had asked respondent no.1 to present the said cheque after 10.2.2010 alleging that petitioner had sold his land and his sale deed would be executed and registered on 10.2.2010. It was further alleged in the same notice that when the said cheque was presented on 16.2.2010, the said cheque was returned with the remarks 'Account Closed'. In the second notice, the same story was reiterated that the cheque number 195854 dt.14.12.2009 for the sum of Rs.10,00,000/- was issued. The said cheque was also dishonoured with the remarks 'Account Closed' on 16.2.2010.Thereafter, the petitioner went to Punjab National Bank to enquire about the matter and subsequently was supplied with the copy of statement of account as well as the vouchers with respect to the amount deposited. The deposit voucher as well as the cheque disclosed that the details of the amount that was deposited and withdrawn by respondent no.1 from the bank of the petitioner. Therefore, the respondent no.1 by taking advantage of the business relations with petitioner forged the signatures of petitioner on two cheques by filling them with his own handwriting or with the handwriting of respondent no.2 & 3 and presented the same for encashment in the abovesaid account. The respondents being fully aware of the fact that neither the petitioner ever operated the aforesaid account nor deposited and withdrew any amount from the same filled the aforesaid cheque amounts on their own, in connivance with each other and then filed false complaints under Section 138 of Negotiable Instruments Act. Respondent No.1 filled both the cheques fraudulently without the knowledge and consent of the petitioner and have presented these forged cheques as genuine. Thereafter, when the petitioner went to the respondents to enquire into the same, they hurled abuses at the petitioner and also gave him beatings. Aggrieved by the same, the petitioner filed the complaint (supra) before the learned trial Court.

3. Learned trial Court summoned the respondents-accused to face trial under Sections 467, 468, 471, 420 IPC vide order dated 13.01.2014 (Annexure P-2). After the appearance of all the respondents, the petitioner led his pre-charge evidence in which he examined 4 witnesses and also placed numerous documents on record including the report of a handwriting expert. Thereafter, the petitioner closed his pre-charge evidence on 14.08.2014. After hearing the arguments of both the parties on the point of charge and perusing the material on record, the learned trial Court after finding no prima facie case against the respondents, discharged them vide impugned order dated 09.10.2018 (Annexure P-4).

4. Aggrieved by the abovesaid order, the petitioner preferred a revision petition before the Court of learned Additional Sessions Judge, Karnal which was dismissed being devoid of any merit vide impugned order dated 13.11.2019 (Annexure P-5).

<u>CONTENTIONS</u>

5. The learned counsel for the petitioner *inter alia* contends that the intention to cheat from the very inception has been clearly established on the part of the respondents as they induced him to open a bank account in pursuance of a well-knitted conspiracy but themselves operated the said account to incur wrongful gain at the expense of the petitioner. He further submits that the fact that the bank vouchers in the name of the petitioner bear signatures of respondent no.2 and respondent no.3 clearly shows the money was regularly deposited or withdrawn by the respondents for their own purposes without his knowledge. It is further submitted that a perusal of the judgement dated 13.09.2013 (Annexure P-3) passed in the complaint case filed by respondent no.1 against the petitioner, wherein, the observations made by the concerned Court clearly show that the cheque in question were already in possession of respondent no.1 and the bank account of the petitioner was being operated by him through his Munim respondent no.2 and respondent no.3.It is further contended that the learned trial Court has overlooked the report submitted by the hand-writing expert as well as other oral evidence on record and thus, the impugned order dated 09.10.2018 (Annexure P-4) is liable to be set aside.

6. *Per contra* learned counsel for the respondents at the outset submits that both the impugned orders have been passed after correct appreciation of the evidence on record and therefore, warrant no interference by this Court. It is further contended that there is evidence on record to prove the offence of forgery against the respondents as the signatures on the cheques in question have been admitted by the petitioner. It is further submitted that the entire story has been concocted by the petitioner which is manifestly clear from the testimony of the bank official examined as witness by the petitioner that the

bank account of the petitioner has been operated by him as well as his sons, at times. It is further submitted that the cheques in question were issued by the petitioner in order to settle his accounts with the respondents as he used to borrow money from the respondents, as mentioned in the complaints filed by respondent no.1 under Section 138 of the NI Act. Therefore, in order to escape his liability under the NI Act, the petitioner filed the criminal complaint (supra) just to arm-twist the respondents.

ANALYSIS & OBSERVATION

7. After giving my thoughtful consideration to the submissions put forth by all sides and on careful perusal of the material on record, it transpires that the petitioner himself admitted in his evidence that he gave blank signed cheque book of his account to respondent no.1 so that he could operate the account of the petitioner. Further, the petitioner has nowhere raised a plea that his signatures were forged by the respondents, and therefore, the offence of forgery cannot be made out. Similarly, the element of dishonest inducement is totally absent in the present case as the petitioner has himself admitted the fact of handing over the signed cheque book to respondent no.1, thereby, no offence under Section 420 IPC is made out either.

8. Further perusal of the material on record, especially, the statement given by PW-2 Sh. Vijay Singhal, head cashier at PNB, Indri branch shows that payment of at least six cheques has been made to the petitioner as well as his sons. Therefore, the allegation levelled by the petitioner in his complaint that he never operated his bank account falls flat. Clearly, he himself as well as his sons used to operate the said bank account. Even though some of the cheques used in the disputed bank account bear the names of respondent no.2 and respondent no.3 but the same was not proved on record as the petitioner did not examine the standard signatures of respondent no.2 and 3 with those on

the said cheques. Further, one of the sons of the petitioner has been named as a nominee in the disputed bank account making the story of the petitioner doubtful. Moreover, the petitioner alleged that respondent no.1 closed the said bank account and then presented the cheques in question for encashment in order to entangle the petitioner in proceedings under Section 138 of NI Act but the learned counsel for the petitioner-complainant appearing before the learned trial Court submitted in his arguments that the said account was closed by the petitioner himself to prevent the respondents from misusing his cheques.

9. Pertinently, even the evidence given by the handwriting expert examined as PW-3 cannot be relied upon as the expert has no qualification qua the field of handwriting analysis and all of his qualification pertains to finger-print analysis. Moreover, the report submitted by him in the present case appears to be based on faulty premises as he has himself stated that signatures in Gurmukhi script cannot be compared with signatures in Hindi (Devanagari), as is the case at hand.

CONCLUSION

10. All of the above-mentioned facts clubbed together establish that the observations recorded by the learned trial Court as well as the learned Court of revision are valid and thus, liable to be upheld.

11. In view of the above discussion, the present petition is dismissed on merit. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

February 26, 2024
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(i) Whether speaking/reasoned Yes/No

(ii) Whether reportable Yes/No