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241 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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DATE OF DECISION:-27.02.2024

The Income Tax & Central Govt. Employees
Co-op SETC, Society Ltd. and another

...Petitioners.

VS.

Deeksha Vohra and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ram Kumar Saini, Advocate for the petitioner.

Mr. Athar Ahmed, DAG, Punjab.

HARKESH MANUJA, J. (Oral)

1. Challenge in the present revision petition is to the judgment dated 06.05.2022 passed by the Court of learned Additional Sessions Judge, Hisar, whereby the appeal filed against the judgment of conviction and order of sentence dated 26.11.2020 passed by learned Judicial Magistrate Ist Class, Hisar, stood dismissed, thereby upholding the judgment of conviction and order of sentence passed therein.

2. The facts of the case are that on account of dishonour of cheque bearing No.096641 dated 06.04.2019 of Union Bank of India, Hisar, amounting to Rs.3,54,630/- a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "NI Act) came to be filed at the instance of respondent No.1-complainant against petitioner No.2-Parveen Bhatanagar, who was the authorized signatory of the Income Tax & Central Govt. Employees Co-op SETC Society Ltd i.e. petitioner No.1.

3. On the basis of the evidence recorded, learned Trial Court vide

judgment/order dated 26.11.2020, convicted the petitioner under Section 138 of the NI Act and sentenced him to undergo RI for a period of 09 months, besides payment of compensation of Rs.5,00,000/-.

4. Aggrieved thereof, the petitioner(s) filed first appeal before the Court of Additional Sessions Judge, Hisar, which was dismissed, thereby, upholding the judgment of conviction and order of sentence passed by the trial Court against the petitioner(s).

5. Impugning the aforementioned judgments passed by both the Courts below, learned counsel for the petitioner submits that the cheque in question was given as a security with regard to deposit of amount mentioned in FDR Ex.P10 to the complainant, which was misused thereafter for the purpose of filing the present complaint. In fact, the said deposited amount had already been withdrawn by the complainant but she did not deposit the FDR as well as her saving bank pass-book with the Society. It has further been submitted that on 23.10.2020, statement of petitioner was recorded by the trial Court that he does not want to move an application under Section 145(2) of the NI Act for examination of the complainant, however, the petitioner was not aware about the provisions of Section 145(2) thereof. Thereafter, the request made by the counsel for the petitioner was also not accepted by the trial Court and in this manner, no opportunity to cross-examine the complainant was given to him.

Learned counsel further submits that the another signatory of the cheque Mr. Jagdish Chander Sharma has not been impleaded as a party in the complaint and in the absence of the same, conviction of petitioner-No.2 was totally illegal. He also points out that even the complaint was not filed by Deeksha Vohra in whose favour the cheque in question was allegedly

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issued, rather, the same was filed by Sunil Vohra on behalf of Deeksha Vohra being her special power of attorney and this fact was not mentioned in the complaint.

6. On the other hand, learned State counsel supported the judgments passed by the Courts below while submitting that the same are absolutely in accordance with the legal proposition of law applicable to the facts and circumstances of the case in hand and thus, warrant no interference.

7. I have heard learned counsel for the petitioner and gone through the paper book as well as the records.

8. In the present case, though the plea of the petitioner was that the cheque Ex.P2 was never issued in discharge of any legally enforceable debt or liability, rather it was taken by the complainant as a security at the time of deposit of the FDR amount and despite withdrawing the FDR amount, she misused the cheque in question; however, the deposit of amount in FDR by the complainant and issuance of cheque to her had not been disputed by the petitioner. Moreover, no evidence has been adduced by the petitioner to prove that the amount of FDR deposited by the complainant was withdrawn by the complainant or returned by the petitioner/society besides it, no effort was even made by the petitioner to produce the records of the society like account books etc. to prove that the amount deposited by the complainant was withdrawn.

As regards the contention regarding obtaining of signatures on statement to the effect that he does not want to move application u/s 145 (2) of the NI Act, is concerned, the Courts below rightly held that since presence of Shri M.S. Saini, Advocate was duly recorded, therefore, it cannot be doubted that the statement of the petitioner was recorded in the

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presence of his counsel, who was well aware of the consequences of the statement made by the petitioner.

As far as the contention of learned counsel for the petitioner that another signatory of the cheque namely, Jagdish Chander Sharma was not impleaded as an accused in the complaint, is concerned, Jagdish Chander Sharma had expired on 06.01.2019 and since petitioner No.2-Parveen Bhatnagar was also one of the signatories of the cheque, which was issued on behalf of society, therefore, there is no legal bar on presentation of the cheque.

With regard to the contention that in the title of the complaint, it was not mentioned that complaint was being filed through special power of attorney, the learned Trial Court rightly recorded that as in para 1 of the complaint, it was categorically mentioned that the complaint was filed through Sunil Vohra, Special Power of Attorney of complainant, who being father of the complainant was well conversant with the facts of the case and also used to deal with the petitioner on behalf of the complainant. In addition, in the present case, from the evidence and the records, it can't be ascertained that cheque in question was issued as security.

9. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the Courts below which are based on law applicable, there being no overlooking of the material available on record, re-appreciation of the evidence being impermissible, the present revision being devoid of merits is thus dismissed and the prayer made for sentences to run concurrently is also denied.

27.02.2024
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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No