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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of decision : October 03, 2024

Aman Bajaj

....Petitioner

Versus

Sudhir Tyagi

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Ashok Tyagi, Advocate, for the petitioner
Mr. Kunal Dawar, Advocate, for the respondent

KULDEEP TIWARI,J. (ORAL)

1. The instant revision petition has been filed to throw the challenge to the judgment of conviction dated 14.6.2018, recorded by the learned trial court concerned, whereby, the petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as NI Act), and order of sentence dated 15.6.2018, whereby, the petitioner has been sentenced to undergo simple imprisonment for a period of two months, and also to pay compensation of Rs 12,00,000/- to the complainant, under Section 357(3) Cr.P.C. and the judgment dated 6.5.2024 passed by the learned appellate court, whereby the statutory appeal preferred by the petitioner has also been dismissed.

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2. In the instant case, the complainant has filed the present complaint u/s 138/141/142 of N.I. Act. Briefly stated the case of the complainant is that complainant, and accused had friendly relations. But real fact is that the appellant does not know complainant Sudhir Tyagi. The accused took Rs.15,00,000/- as loan from Nishant Tyagi. An agreement to this effect was executed on dated 16-11-2015. In order to repay the amount accused issued cheques bearing No. 229462 dated 30-01-2016 of Rs.5,00,000/- and 229463 dated 30-03-2016 of Rs.10,00,000/-drawn on Federal Bank, Gurugram in favour of complainant. On presentation the said cheques returned unpaid with the remarks INSUFFICIENT FUNDS vide bank return memo dated 19-04-2016. Thereafter the complainant got issued a legal notice dated 04-03-2016. That a notice was served to come present on 17-11-2016 to which accused did not plead guilty and claimed trial. Thereupon, the complainant examined the witnesses. The petitioner-accused also examined three witnesses in his defence.

3. The learned trial court concerned after appreciating the evidence adduced by both the parties concerned, recorded the verdict of conviction dated 14.6.2018, and sentenced the petitioner vide order dated 15.6.2018. Having aggrieved with the judgment of conviction and order of sentence, he filed a statutory appeal. The appeal was pending consideration, and on dated 11.3.2024, the accused-petitioner absented himself which led to issuance of warrants of arrest against the present petitioner. On the request made by the learned counsel for the

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complainant-respondent, the learned appellate court instead of waiting for the execution of warrants, decided the instant appeal in the absence of the present petitioner-accused, and proceeded to dismiss the same, vide impugned judgment dated 6.5.2024.

4. The learned counsel for the respondent, at the very outset, fairly admitted that the procedure adopted by the learned appellate court concerned, is not legal, rather the learned appellate court concerned, should have appointed any legal aid counsel, or an *amicus curiae*, to represent the petitioner-accused. He further consented that the matter requires reconsideration by the learned appellate court concerned.

5. In view of the consensus, the instant revision petition is **allowed** and the judgment dated 6.5.2024 passed by the learned appellate court, is hereby **set aside**, and the matter is remanded back to the learned appellate court concerned for rehearing, by restoring the appeal to its original number. Since the matter is pending since the year 2018, before the learned appellate court, therefore, the mandamus is passed upon the learned appellate court concerned, to decide the appeal within three months from the date of receipt of certified copy of this order.

6. Since the petitioner absented himself, therefore, this Court vide order dated 12.8.2024, directed the petitioner to surrender before the learned trial court concerned, to honour the sentence as imposed upon him. In deference to the directions issued by this Court, the petitioner duly surrendered before the learned trial court on dated 1.10.2024.



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7. Since the judgment passed by the learned appellate court concerned, has been set aside, therefore, the petitioner is ordered to be released from the custody, on his furnishing requisite bail bonds and surety bonds, to the satisfaction of the learned appellate court. It is made clear that in case the petitioner did not cause appearance after release from the custody before the learned appellate court on the date fixed, the appellate court is at liberty to appoint any legal aid counsel or *amicus curiae* to adjudicate the matter.

October 03, 2024

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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ? *Yes/No*
Whether Reportable ? *Yes/No*