2024:PHHC:165710

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

115

CRR 2705 of 2023
Date of Decision: 16.09.2024

Santosh Kumari ...Petitioner

Versus

Ranbir Singh ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Kiran Verma, Legal Aid Counsel
for the applicant-petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition against the impugned judgment dated 15.03.2023 passed by the Additional Sessions Judge, Faridabad and the impugned judgment dated 13.07.2022 and order of sentence dated 18.07.2022 passed by the Judicial Magistrate 1st Class, Faridabad, whereby, the petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and sentenced to undergo simple imprisonment for a period of one year. The petitioner was also directed to pay compensation to the tune of Rs. 9,20,000/-, i.e., double of the cheque amount, to the complainant under Section 143(1) (proviso) of Negotiable Instruments Act read with Section 357(1)(3) of the Code of the

Criminal Procedure within a period of one month from the date passing the judgment.

2. The brief facts of the case are that the respondent had filed a complaint under Section 138 of the Act against the petitioner/accused, wherein, it was alleged that the petitioner/accused was the owner in possession of property, which was part of Khewat No. 117/111, Khatoni No. 144, Rect. No. 24, Killa No. 8(8-0) measuring 32 square yards situated at Vaka Mauja Palla, Tehsil and District Faridabad and she entered into a full and final payment agreement to sell with the respondent/complainant vide the agreement to sell dated 25.02.2016. However, the petitioner/accused had neither handed over the possession of the said property nor got the sale deed executed in favour of the respondent. On 24.10.2017, the petitioner cancelled the agreement to sell and in lieu of that she agreed to pay the market price of the property, i.e., Rs. 10 lacs to the respondent. Out of this amount, the petitioner paid Rs. 5,40,000/- in cash and for the balance amount of Rs. 4,60,000/-, the petitioner/accused had issued a cheque bearing No. 548718 dated 24.10.2017 drawn on Indian Bank, Sector 37, Faridabad and also executed a deed for cancellation of the agreement dated 24.10.2017 in the presence of the witnesses. She had further assured that the payment would be made on 30.09.2018 and if the petitioner/accused failed to make the payment, the respondent would be entitled to get the payment through the cheque. When the petitioner did not pay the amount of

Rs. 4,60,000/-, the respondent requested the petitioner to make the payment. However, when no payment was made, the respondent presented the said cheque in his account with Syndicate Bank, Tilpat, Faridabad for encashment. However, the said cheque was returned unpaid on account of "funds insufficient" vide memo dated 29.11.2018. The respondent/complainant sent a registered legal notice to the petitioner on 17.12.2018 to make the payment within 15 days of receipt of the legal notice, but the petitioner did not make any payment.

3. During the preliminary evidence, the respondent examined himself as CW1 and after recording the evidence, the petitioner was summoned for commission of the offence punishable under Section 138 of the Act.

4. After appearance of the petitioner/accused, the respondent again appeared as CW1 and proved on record the following documents"-

Ex. C-1	Original Cheque
Ex. C-2	Return memo
Ex.C-3	Legal Notice
Ex.C-4	Postal Receipt
Ex.C-5	Agreement
Ex.C-6	Cancellation of Agreement

5. After closer of the evidence of the respondent, the petitioner did not lead any evidence in her defence.

6. Learned counsel for the petitioner vehemently contends that in the present case, both the Courts had failed to appreciate that the cheque in question, i.e., Ex.C1 was never issued by the petitioner in discharge of any legal debt or liability. Rather, the petitioner had issued the cheque as a blank signed security cheque and the respondent had misused the same. Still further, the petitioner had admittedly borrowed a sum of Rs. 4 lacs from the respondent and the respondent got an agreement to sell executed with regard to the property fraudulently. Later, the petitioner returned Rs. 5,40,000/- to the respondent and a cancellation agreement was also executed between the parties. Thus, there was no legally enforceable debt or liability towards the petitioner. Still further, the agreement to sell Ex.C5 and cancellation of agreement Ex. C6 were not proved by the respondent as per the requirement of law and no witness was examined by the respondent. Still further, a security cheque Ex.C1 was misused by the respondent and the petitioner has been wrongly convicted. Apart from that, there was sufficient evidence on record to rebut the resumption under Section 139 of the Act.

7. I have heard learned counsel for the petitioner at length and perused the record.

8. In the present case, it is apparent from the evidence led by both the sides that the petitioner had not disputed the execution of the agreement to sell, cancellation of agreement and issuance of cheque in question. However, the only plea raised by her is that she

had borrowed Rs. 4 lacs from the respondent and as a security, she had executed an agreement to sell and the consideration amount was stated to be Rs. 10,00,000/-. She further stated that she had paid a sum of Rs. 5,40,000/- and the respondent had taken a cheque of Rs. 4,60,000/- on the ground that the said agreement to sell had been shown in the ITR and later, the cheque was misused. However, it is rightly held by both the Courts that a false plea has been raised by the petitioner in this regard. In case, the petitioner wanted to disprove the documents Ex.C5 and Ex.C6 and wanted to prove her version, she could very well do the same by examining the attesting witnesses of Ex.C5 and Ex. C6. Still further, in case, the respondent had taken the cheque in question from the petitioner on some false pretext and the same was misused by him, the present petitioner was at liberty to initiate criminal proceedings against the respondent. However, no complaint was ever made by the petitioner to any authority.

9. Still further, the execution of the agreement to sell as well as deed of cancellation of the agreement to sell had been duly proved on record and thus it could never be stated that the cheque was not issued in discharge of a legal liability. The petitioner had not handed over the possession of the land to the respondent and the agreement to sell Ex.C5 was cancelled vide cancellation deed Ex.C6, the petitioner was under a legal obligation to return the amount received by her and it is a case of the respondent himself that she had paid a sum of Rs. 5,40,000/- in cash and the remaining amount by

way of cheuqe Ex.C1. Even otherwise, I have gone through the findings recorded by both the Courts and the impugned judgments are based on correct appreciation of evidence and law. Learned counsel appearing on behalf of the petitioner has failed to point out any illegality, material irregularity or perversity in the impugned judgments passed by the Courts. Thus, there is no merit and the petition is ordered to be dismissed.

16.09.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No