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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2700-2023 (O&M)
Date of Decision:25.01.2024

Abbas Ali

...Petitioner

Vs.

State of Haryana and Anr.

...Respondents

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present: Mr. Namit Khurana, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1.
- The present revision petition has been filed before this Court with a prayer to set aside the impugned judgment of conviction dated 03.08.2017 and order of sentence dated 05.08.2017, passed by the Court of Sub Divisional Judicial Magistrate, Bilaspur, whereby the present petitioner was held guilty for committing the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the “Act”) and was sentenced to undergo simple imprisonment for a period of 01 year and further to pay Rs.3,60,000/- as compensation to the complainant and also against the judgment dated 07.10.2023 passed by the Court of Additional Sessions Judge, Yamuna Nagar at Jagadhari, whereby the appeal filed by the petitioner was ordered to be dismissed.
2.
- Learned counsel for the petitioner contends that in the present case, the respondent could not lead any evidence to show the sufficient compliance of the provisions of the “ The Act”. In fact, both the Courts did not appreciate the evidence led by the parties. Further, the cheque in question was given as a security and by making material alteration in the cheques, the cheque was presented by the respondent for encashment. Still further, the truck in

question was purchased and the payment was made on 10.05.2014 in cash, whereas, the petitioner had issued the cheque for an amount of Rs. 3,60,000/- as a security cheque. He further contends that the payment due against the complainant was paid by the accused and thereafter, the complainant had executed an affidavit accepting the fact that the complainant had received the amount of sale consideration/truck and such affidavit was available on the file as Ex.D1. Learned counsel further submitted that no statutory notice was served on the present petitioner and impugned judgments are illegal and unsustainable.

3. I have heard learned counsel for the petitioner and perused the record.

4. In the present case, it has been alleged that the mandatory provisions of the “ The Act” had not been complied by the respondent/complainant. In fact, after dishonour of the cheque, the respondent/complainant got issued a legal notice dated 01.10.2015 to the petitioner, calling upon him to make the payment of the cheque in question to the complainant; however, after issuance of the statutory notice, no payment was made by the present petitioner. Consequently, the complaint was presented before the competent Court. Still further the petitioner has falsely alleged that the truck was purchased and the payment was made on 10.05.2014 in cash and the respondent/complainant had got the cheque in question issued for an amount of Rs.3,60,000/- as a security. However, there is no force in the arguments raised by the learned counsel for the petitioner. The present cheque bearing No.6145 dated 15.09.2015 was issued a for a sum of Rs. 3,60,000/- and the dishonour memo dated 18.09.2015 was available as Ex.C-2. Even as per the

said memo, the cheque in question was dishonoured due to the reason “payment stopped by the drawer”, consequently, it entails liability under Section 138 of the “ The Act”. The notice as well as postal receipts were duly exhibited on record. Still further, even the purchase of truck had been admitted by the petitioner and he had initially issued a cheque dated 07.08.2014, which was dishonoured. Thereafter, the present cheque was issued by the petitioner, which was again dishonoured and no payment was shown to have been made by the petitioner to purchase the truck. Thus, the defence set up by the petitioner that he had already paid the outstanding amount of Rs.3,60,000/- to the respondent on 10.05.2014 is unbelievable. Even the detailed findings have been recorded by the Trial Court as well as by the Appellate Court with regard to the affidavit Ex. D-1.

5. Still further, it has been falsely alleged by the petitioner that the cheque was given as a security cheque. However, there is no distinction between an ordinary cheque and a cheque issued as a security. Whether the cheque was issued as a security or not, is irrelevant, while deciding the guilt of an accused under Section 138 of “the Act”. Even, I have gone through the findings recorded by both the Courts and find no reasons to deviate from the same. Learned counsel for the petitioner has failed to show that the impugned judgments are suffering from any kind of illegality or perversity.

6. Thus, findings no merits, the present revision petition is ordered to be dismissed.

7. Pending application(s), if any, stand(s) disposed off, accordingly.

25.01.2024

hitesh

(N.S.SHEKHAWAT)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No