

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Revision No. 163 of 2004

Date of Decision 28<sup>th</sup> February, 2011

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*M/s Hamara Furniture SCD & another* .....*Petitioners.*

*Versus*

*M/s Dev Foam Pvt. Ltd.* .....*Respondent.*

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*Coram*

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting?<sup>1</sup> No

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For the Petitioners: Mr. N.K. Thakur, Advocate.

For the Respondent: Mr. Rahul Mahajan, Advocate.

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*Dev Darshan Sud, J (oral)*

The petitioner is aggrieved by the judgment of two Courts below convicting him for offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act") and sentenced him to undergo simple imprisonment for six months and to pay compensation of ₹ 60,000/-. In default of payment of compensation, to further undergo simple imprisonment for a period of three months.

2. The case pleaded by the complainant/respondent is that the complainant is a registered

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<sup>1</sup> Whether Reporters of Local Papers may be allowed to see the judgment? Yes

company having its Industrial Unit at village Thanthawal (Rajpura), Tehsil Nalagarh, District Solan. A cheque Ext.P6 amounting to ₹ 50,000/- was issued by the petitioners and was subsequently dishonoured by the HDFC Bank, Chandigarh on which it was drawn. The memo accompanying the cheque stated that there were insufficient funds in the account of petitioners, who had issued this cheque. The defence set up by the petitioners was that the cheque had been issued as security and not for valuable consideration. This part of the defence was disbelieved and the learned trial Court which proceeded to convict the petitioner and to levy compensation as also ordering his detention in prison.

3. Appeal was preferred before the learned Sessions Judge, Solan camp at Nalagarh, who reappreciated the entire evidence. It was urged that the complainant had (a) failed to prove that the cheque was issued in discharge of any legally enforceable debt and liability, (b) the version of the accused that the cheque Ext.P6 was issued as a security was reasonable and only this conclusion could be arrived at in the facts and circumstances of the case. The learned Appellate Court on perusal of the entire evidence, held that the dishonour of cheque was proved on record. This was issued by Shri Anil Jain for and on behalf of the first petitioner. According to the testimony of PW1 Manas Bhaduri, authorised representative of the complainant company, which was engaged in manufacturing of mattresses, and these mattresses were purchased by the petitioners vide Bill No. 620, 740, 760 and 765 and cheque Ext.P6 dated 30.3.2000, drawn on HDFC Bank at Chandigarh, was issued in discharge of

this liability. The learned Appellate Court holds that testimony of this witness remains unchallenged and corroborated from the record. The defence set up that it was issued as security was rejected.

4. I have heard learned counsel appearing for the petitioner and also gone through the record.

5. I cannot persuade myself to hold that findings on the points of fact of two Courts below are either perverse or against the facts on record. I am also not persuaded to hold that defence of the petitioners that the cheque was not issued for discharge of any legally enforceable debt and liability but as security. In revisional jurisdiction I am not persuaded to perverse the findings of two Courts below. I have taken through the evidence in detail by the learned counsel appearing for the appellant. In the facts and circumstances of the case, this revision petition is dismissed.

6. Adverting to the quantum of sentence, I find that the petitioners have already deposited a sum of ₹ 60,000/- before the learned Judicial Magistrate Ist Class, Nalgarh on 16.10.2004 pursuant to the order passed by this Court on 27.9.2004 in Cr.MP No. 524 of 2004. In these circumstances, it is directed that this amount alongwith interest accrued, if any, shall be released to the respondent-complainant forthwith. The sentence of imprisonment is set aside. Revision petition stands disposed of.

February 28<sup>th</sup>, 2011  
*ms*

(Dev Darshan Sud),  
Judge

