

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 47 of 2010

Reserved on: 22.06.2016

Date of decision: 30.06.2016

M/S Om Traders

... Petitioner

Versus

Rajesh Kumar

... Respondent

Coram :

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ No.

For the petitioner: Mr. Ramakant Sharma, Advocate.

For the respondent: Mr. G.R. Palsra, Advocate.

Ajay Mohan Goel, J.:

This revision petition has been filed by the complainant /petitioner against the judgment passed by the Court of learned Sessions Judge, Hamirpur in Cr. Appeal No. 66 of 2009 dated 08.12.2009, vide which, learned Appellate Court has reversed the judgment of conviction dated 06.10.2009 passed by the Court of learned Judicial Magistrate Ist Class, Court No. III, Hamirpur, in Complaint No. 10-1 of 2007 under Section 138 of Negotiable Instrument Act.

2. Brief facts necessary for adjudication of the present case are that a complaint was filed by the present petitioner,

¹Whether reporters of Local Papers may be allowed to see the judgment? No.

hereinafter referred to as the complainant under Section 138 of the Negotiable Instruments Act. This complaint was filed by the complainant i.e. M/S Om Traders through Ajay Prashant Singh Pathania against the accused on the ground that the complainant was running the business and had supplied juices of Priyagold and in lieu of it, accused had issued and handed over one cheque dated 21.10.2006 for an amount of Rs.65,186/- i.e. cheque No. 468627, which cheque was deposited by the complainant with its banker, Kangra Central Cooperative Bank Ltd., for the same to be honoured. The cheque issued by the accused was sent to the Punjab National Bank. The same was returned by the banker of the accused with endorsement "account closed". As per the claimant, the accused was informed about the said cheque having been dishonoured and he was advised to make the payment. A legal notice was served upon the accused on 05.01.2007, which was duly acknowledged by the accused. However, despite receiving of the legal notice, the accused did not make any payment and accordingly, the complaint was filed.

3. As sufficient grounds were found for summoning the accused, accordingly, accused was summoned and notice of accusation under Section 138 of the Negotiable Instruments Act was put to the accused, to which he pleaded not guilty and claimed trial.

4. Learned trial Court on the basis of material placed on record by the parties, concluded that there was enough material on

record to prove the assertion of the complainant that the accused had issued cheque Ext.CW1/A, which was not honoured as account of the accused stood closed. The learned trial Court further held that the accused had not led any evidence to fortify his defence and accordingly, the learned trial Court convicted the accused for offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for three months and to pay fine of Rs.65,186/- as compensation to the complainant.

5. Feeling aggrieved by the said judgment passed by the learned trial Court, the accused filed an appeal. The said appeal was allowed by the Court of learned Sessions Judge, Hamirpur, vide decision dated 08.12.2009.

6. The learned Appellate Court came to the conclusion that the complainant had not adduced evidence pertaining to Account No. 278 i.e. the account of the accused. It held that the evidence which had been produced on record pertained to Account No. 78 of the concerned bank, which admittedly was not the Account Number of the accused. The learned Appellate Court further held that the complaint had been filed against Rajesh Kumar, whereas the complainant had admitted as CW-2 that the juice in question was supplied to M/S Kailash enterprises. As per the learned Appellate Court, no record was produced from which it could be inferred that the complainant had supplied any juice to the accused in his capacity as proprietor of M/S Kailash Enterprises or that he owed the amount in question to the complainant. Accordingly, the learned

Appellate Court accepted the appeal and the judgment of conviction and sentence passed against the appellant/accused was ordered to be set aside.

7. Feeling aggrieved by the said judgment, the complainant has filed the present revision petition.

8. A perusal of the statement of Ajay Prashant Singh Pathania CW-2, proprietor of the complainant firm, demonstrates that he has deposed that Priyagold juice was supplied to the accused on 21.10.2006. He has further stated that in lieu of the same, accused had issued a cheque for an amount of Rs.65,186/- drawn upon Punjab National Bank, Palampur, Ext. CW1/A, which was deposited by him in KCC Bank, Anu Branch. He has further deposed that the same was returned back unpaid vide Memo Ext. CW1/C and this fact was brought into the notice of the accused. The said witness has further deposed that accused asked him to again present the cheque with the bank and on the asking of the accused, he again presented the cheque in the bank, but the same was again returned back unpaid on 21.12.2006 vide Memo Ext. CW1/B. According to him, it is thereafter that a legal notice was served upon the accused through his counsel. In his cross-examination, he has stated that alongwith the complaint no bill with regard to supply of juice to the accused has been appended. He has further deposed in his cross-examination that the juices was supplied by him to Kailash Enterprises and the complainant was

having business transaction with Kailash Enterprises for almost six months.

9. It has come in the statement of CW-3 P.C. Chaudhary, Manager, PNB, Palampur Branch, that on 21.12.2006 a cheque bearing No. 468627 was received for payment in the bank which was returned back unpaid vide Memo Ext. CW1/B and earlier also, the said cheque was presented on 25.11.2006 for encashment, which also had been returned unpaid with the endorsement "account closed".

10. Another important aspect of the matter is that in his cross-examination CW-3 has stated that he has brought Bank records of Account Number 78, whereas, Account Number of Rajesh Kumar is not 78 but is 278. In his cross-examination, CW-3 has also stated that even the signatures of accused on Ext. CW1/A do not tally with the signatures of the accused in the bank and his photograph is not tallying with his physical appearance.

11. Be that as it may, the fact of the matter remains that the complainant has not adduced evidence from the concerned Branch pertaining to Account No. 278, which was account number of the accused. Evidence has been adduced pertaining to Account No. 78. Cheque Ext. CW1/A does not pertain to Account No. 78 but pertains to Account No. 278. Therefore, in view of the fact that the record of the bank pertaining to Account Number 278 was not produced on record, the learned Appellate Court rightly concluded that the accused could not have been held guilty under the

provisions of Section 138 of the Negotiable Instruments Act in the absence of the relevant material having been placed on record by the complainant pertaining to the Account of the accused, qua which the cheque was allegedly issued by the accused to the complainant.

12. Further, in my view, the presumption under Section 139 of the Negotiable Instruments Act is also of no assistance to the petitioner because in the present case, the petitioner has failed to prove that cheques in issue were supplied to the accused and that accused owed anything to the complainant.

13. Keeping in view the said aspect of the matter, I do not find any perversity or illegality with the judgment passed by the learned Appellate Court, whereby it has allowed the appeal of the present respondent and has set aside the judgment of conviction passed against accused by the learned trial Court.

14. The learned counsel for the petitioner has also not been able to point out from the record any material particular which has been over-looked by the learned Appellate Court.

15. It is well settled law that the jurisdiction of High Court in revision is severely restricted and it cannot embark upon re-appreciation of evidence. The High Court in revision cannot in absence of error on a point of law, re-appreciate evidence and reverse a finding of law.

16. It has been further held by the Hon'ble Supreme Court that the object of the revisional jurisdiction was to confer power

upon superior criminal Courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some undeserved hardship to individuals.

17. Thus it can be safely inferred that this Court has to exercise its revisional powers sparingly. Though, this Court is not required to act as a Court of appeal, however, at the same time it is the duty of the Court to correct manifest illegality resulting in gross miscarriage of justice. However, I do not find any manifest illegality with the judgment passed by the learned Appellate Court in the present case.

18. In view of the above discussion, I am of the considered view that there is neither any infirmity nor any perversity with the judgment passed by the learned Appellate Court and accordingly, the said judgment passed by the learned Appellate Court is upheld and the present revision petition is dismissed.

**June 30, 2016
(BSS)**

**(Ajay Mohan Goel),
Judge**