

Bhoop Singh vs.state and Anr

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Court : Delhi

Decided On : Dec-04-2017

Appellant : Bhoop Singh

Respondent : State and Anr

Advocate for Pet/Ap. : Mr. Jatin Gupta

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Order reserved on:

21. t November, 2017 Order pronounced on:

4. h December, 2017 + CRL. REV.P.632/2016 BHOOP SINGH

... Petitioner

Through: Mr. Jatin Gupta, Advocate. STATE & ANR versusRespondents
Through: Ms. Anita Abraham, APP for the State with SI Sunder Singh from PS-Baba Haridas Nagar for R-1. Ms. Rakhi Dubey Adv. For R-2. CORAM: HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL1 The present Criminal Revision Petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) assailing the judgement dated 27.05.2016 passed by the Additional Sessions Judge, Dwarka Courts, Delhi in Criminal Appeal No.12/16, whereby the judgement dated 02.01.2015 and order on sentence dated 17.01.2015 passed by the Metropolitan Magistrate was upheld.

2. Factual matrix emerging from the record is that, a complaint was lodged by one Amit Kumar alleging therein that the petitioner who being in close family relations with him, requested for a personal loan for a sum of Rs. 2 Lakhs in the first week of October 2011. Considering the urgent need of the petitioner, the complainant is stated to have given a sum of Rs. 2 Lakhs to the petitioner vide CRL. REV.P.632/2016 Page 1 of 8 Cheque bearing No.038785, dated 12.01.2011, issued from the account of one Raj Kalan/a relative of the complainant and the same was encashed by the petitioner from the account of one Inder Singh. The complainant further stated that in order to discharge his personal liability, the petitioner issued a Cheque bearing No.394512 dated 05.07.2012 for a sum of Rs. 2 Lakhs, which when presented for encashment on 05.07.2012 was returned unpaid for the reasons Account Blocked. Thereafter a legal demand notice dated 30.07.2012 was served upon the petitioner. However even despite the said notice, the petitioner did not make any payment to the complainant and hence the present complaint was lodged.

3. A notice dated 14.01.2013, under Section 251 Cr.P.C. for the offence punishable under Section 138 Negotiable Instruments Act, 1881 (hereinafter referred as 'NI Act') was served upon the petitioner. Upon being summoned by the Trial Court, the accused/petitioner entered appearance; pleaded not guilty, and claimed trial. The parties led their respective evidence. The complainant examined himself on oath as a sole witness which was followed by the statement of accused/petitioner under Section 313 Cr.P.C. wherein he denied his liability towards the complainant and deposed that his two signed cheques were stolen by the complainant. He also denied the service of legal demand notice upon him. No other witness was examined by the petitioner. CRL. REV.P.632/2016 Page 2 of 8

4. The petitioner stands convicted and sentenced by the Trial Court in CC.No.35 under Section 138 of the N.I Act and has been directed to undergo Simple Imprisonment (SI) for five months, pay a compensation of Rs.2,70,000/- to the complainant and in case of failure in paying the said amount, to further suffer SI for three months vide judgment dated 02.01.2015 and order on sentence dated 17.01.2015. The petitioner preferred an appeal against the aforesaid judgment on conviction and order of sentence of the Trial Court vide Crl.Appeal No.12/2016 before the Special Judge, (PC Act) CBI-03, Dwarka Courts, New Delhi. The

Appellate Court vide order dated 27.05.2016 affirmed the judgment and order on sentence passed by the Trial Court and dismissed the appeal. Hence the present Revision Petition.

5. Mr. Jatin Gupta, learned counsel for the petitioner contended that judgement of conviction and order on sentence passed by the Trial Court is bad in law and is based on conjectures and surmises; that the prosecution miserably failed to prove the guilt of the accused/petitioner beyond reasonable doubt; that the Trial Court failed to appreciate that there are material contradictions in the testimony of the prosecution witness; that in fact the signed cheques were not issued regarding discharge of any legal liability but were rather stolen by the complainant from the petitioner's house where the complainant visited regularly; that regarding the stolen cheque, a complaint had been lodged by the petitioner; that the petitioner had not received the legal demand notice as alleged CRL. REV.P.632/2016 Page 3 of 8 to be served by the complainant and the complainant has also not led any documentary proof to show that the petitioner received the said notice; that the petitioner was neither the authorized signatory nor was he legally liable to discharge any debt or liability towards the complainant; that in view of the above the petitioner be acquitted of the charges levelled against him and the impugned judgement on conviction and order of sentence passed by the Trial Court be set aside.

6. On the other hand, learned APP for the State strongly opposed the present revision petition filed by the petitioner and submitted that the prosecution has been able to prove its case beyond any reasonable doubt and there is no illegality or perversity in the impugned judgement of conviction and order of sentence passed by the Trial Court so as to warrant any interference by this Court. Hence the present petition be dismissed.

7. I have heard the learned Counsel for the parties and perused the material available on record.

8. It cannot be disputed that the petitioner and the complainant were well acquainted with each other as both the parties have deposed similarly to this effect. The complainant/Amit Kumar categorically deposed before the Trial Court

as under:-

""My wife and daughter of accused was working together at same place..... It is also correct that Seema was regularly visits at my CRL. REV.P.632/2016 Page 4 of 8 house. It is correct that my wife was also regularly visited Seema's house and sometime, I picked my wife from the house Seema " The petitioner/Bhoop Singh did not dispute the said fact during his cross-examination. Further in his statement under section 315 Cr.P.C on Oath he stated as under:-

""I know the complainant Sh. Amit Kumar as he was a friend of my daughter namely Seema. He used to visit my residence while I used to be away. " Hence from the above it is clear that there were close family relations between the petitioner and the complainant and the same can be safely presumed to be the underlying reason why the complainant would have advanced a personal loan of Rs. 2 Lakhs to the petitioner.

9. The petitioner has stated in his defence that the two cheques as alleged to have been issued to the complainant for discharge of his legal liability was in fact stolen by the complainant from the house of the petitioner as he was on regular visiting terms. On the other hand, the complainant deposed that a loan of Rs.2 Lakhs was advanced to the petitioner from the bank account of Raj Kala (relative of the petitioner) through a cheque bearing No.038785 dated 12.10.2011 and the said cheque was encashed by the petitioner in the account of Inder Singh. Although the petitioner has deposed that Inder Singh is not known to him, yet he has neither disputed the fact of encashment of the CRL. REV.P.632/2016 Page 5 of 8 said cheque in the account of Inder Singh nor has he examined Inder Singh as a defence witness to disprove the alleged encashment of the cheque at his instance. Further the petitioner has also admitted his signatures on the cheque (Ex.CW-1/A) which he had issued to the complainant for the discharge of his liability. The petitioner has also deposed that "My account has been dead since the very beginning". Despite having said so, the petitioner has not tendered any reasonable explanation as to why he had kept the blank signed cheques at his house when his account was already closed. Hence the plea raised by the petitioner does not inspire confidence.

10. The petitioner has further contended that the legal demand notice/Ex CW-1/C was never received by him. As per records, the legal demand notice/Ex CW-1/C was duly sent through registered post and AD Card/Ex CW-1/E was duly received by Deepti/daughter of the petitioner. The petitioner has also not disputed the address mentioned on Ex CW-1/E and the same address also appears on the bail bond furnished by the petitioner. Therefore the Trial Court as well as the Appellate Court has rightly held that the presumption, as per Section 27 of the General Clauses Act, 1897 that the legal notice was duly received by the petitioner in the ordinary course of postal business, lies in favour of the complainant. Moreover the petitioner has not led any evidence before the Trial Court to prove the contrary. CRL. REV.P.632/2016 Page 6 of 8 11. The petitioner has also urged in support of his defence that in respect of the stolen cheque, the petitioner had also lodged a complaint. Perusal of the record reveals that the complainant in the present case had lodged his complaint on 24.08.2012; the petitioner appeared before the Trial Court on 09.11.2012; and the notice under Section 251 Cr.P.C. was served upon the petitioner on 14.01.2013. However a complaint was filed by the petitioner on 26.06.2013 to SHO. There has been a clear lapse of 7 months in filing the complaint by the petitioner. The petitioner deposed that "I came to know that my cheques having got stolen only after receiving the summons from this Hon'ble Court."

If the same is assumed to be true, the petitioner even then did not take any prompt action despite being aware of the fact that a complaint has been lodged against him by misusing his stolen cheques. The petitioner approached the police authorities only after seven months. Therefore from the inordinate and unexplained delay in lodging the complaint, it is quite apparent that the said complaint was a clear afterthought on the part of the petitioner to create a fictitious defence in his favour.

12. Therefore for the reasons set out above, I am of the considered view that the on no count does the impugned judgment and order on sentence call for any interference. The Trial Court has fully appreciated the evidence placed on record by the parties. Findings of conviction cannot be said to be erroneous or perverse. CRL. REV.P.632/2016 Page 7 of 8 13. Under the circumstances, the Criminal

Revision petition being bereft of merit is dismissed.

14. Accordingly, the petition stands disposed of, so also pending application(s), if any.

15. Records of the Court below be sent back forthwith along with the copy of the order.

16. Copy of this order be sent to the concerned Jail Superintendent for information. DECEMBER4 2017 / gr// SANGITA DHINGRA SEHGAL, J.

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