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Court : Chhattisgarh

Decided On : Mar-10-2011

Judge : T.P. Sharma

Appeal No. : Criminal Revision No 578 of 2010 & Criminal Misc Petition No 891 of 2010

Appellant : Sukhdev Prasad Tondon and Another

Respondent : Bal Ram Kishore Tondon and Another

Judgement :

(Criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure 1973 and Application under S)

1. Criminal Revision No.578/2010 filed on behalf of the accused/applicant namely Sukhdev Prasad Tandon against the judgment dated 18-10-2010 passed by the 3rd Additional Sessions Judge, Bilaspur in Criminal Appeal No.32/2009 affirming the judgment of conviction and order of sentence dated 16-3-2009 passed by the Judicial Magistrate First Class, Bilaspur in Criminal Complaint Case No.119/2009 and Criminal Miscellaneous Petition No.891/2010 filed on behalf of the complainant namely Balram Kishore Tandon against the order dated 18-10-2010 passed by the 3rd Additional Sessions Judge, Bilaspur

in Criminal Revision No.163/2009 affirming the same judgment dated 16-3-2009 passed by the same Judicial Magistrate First Class, Bilaspur in same Criminal Complaint Case No.119/2009, are being disposed of by this common order.

2. Vide Criminal Revision No.578/2010 accused/applicant Sukhdev Prasad Tandon has challenged legality and propriety of the judgment dated 18-10-2010 passed by the 3rd Additional Sessions Judge, Bilaspur in Criminal Appeal No.32/2009 affirming the judgment of conviction and order of sentence dated 16-3-2009 passed by the Judicial Magistrate First Class, Bilaspur in Criminal Complaint Case No.119/2009, whereby learned Judicial Magistrate First Class has convicted the accused/ applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') relating to cheque No.7094151 of Rs.5 lakhs and sentenced him to undergo RI for three months and pay compensation of Rs.9 lakhs to the complainant, while holding that the complainant has not proved the dishonour of another cheque Ex.P-1 bearing No.513685.

3. By filing Criminal Revision No.163/2009 before the Court of 3rd Additional Sessions Judge, Bilaspur, complainant Balram Kishore Tandon has challenged the part of judgment dated 16-3-2009 passed by the Judicial Magistrate First Class, Bilaspur in Criminal Complaint Case No.119/2009, relating to cheque Ex.P-1 for which the trial Court has not held the accused guilty. Criminal Revision No.163/2009 was finally dismissed by the 3rd Additional Sessions Judge, Bilaspur vide order dated 18-10-2010 and same has been challenged by the complainant before this Court in Criminal Miscellaneous Petition No.891/2010.

4. Brief facts necessary for disposal of the aforesaid criminal revision and the petition under Section 482 of the Cr PC are that Sukhdev Prasad Tandon - accused/applicant in Criminal Revision No.578/2010 has issued two cheques valued at Rs.5 lakhs and Rs.4 lakhs in favour of Balram Kishore Tandon which were dishonoured by the Bank. After complying the procedure, complaint under Section 138 of the Act was filed by complainant Balram Kishore Tandon and after affording opportunity of hearing to the parties, learned Judicial Magistrate First Class convicted and sentenced accused Sukhdev Prasad Tandon under

Section 138 of the Act relating to cheque of Rs.5 lakhs and held that the complainant has not proved the dishonour of cheque relating to Rs.4 lakhs. Conviction and sentences of accused Sukhdev Prasad Tandon were challenged by the accused before the Court of 3rd Additional Sessions Judge, Bilaspur by filing criminal appeal. Complainant Balram Kishore Tandon has also challenged part of the judgment relating to the finding that the complainant has not proved the dishonour of cheque of Rs.4 lakhs, in criminal revision before the same Additional Sessions Judge. Vide judgment dated 18-10-2010 passed in Criminal Appeal No.32/2009, the 3rd Additional Sessions Judge, Bilaspur has dismissed the appeal filed on behalf of accused Sukhdev Prasad Tandon and vide order dated 18-10-2010 passed in Criminal Revision No.163/2009, the 3rd Additional Sessions Judge, Bilaspur has dismissed the revision filed on behalf of complainant Balram Kishore Tandon.

5. I have heard learned counsel for the parties, perused the judgment and the order impugned and records of both the Courts below.

6. Mr. Hemant Gupta, learned counsel for the accused, vehemently argued that in order to prove guilt of the accused for commission of offence under Section 138 of the Act, the complainant is required to prove the fact that the alleged cheque was issued in discharge of any debt or other liability. In the present case, as per Ex.D-1, report lodged by the complainant, undated cheque was issued by the complainant for security / guarantee of return of Rs.9 lakhs which the complainant has spent in petrol pump, which shows that the cheque has not been issued for debt or other liability and, therefore, the accused is not liable for payment of any amount of cheque. While convicting the accused, both the Courts below have committed illegality and finding of both the Courts below are perverse. Learned counsel submits that as per Ex.D-1, the cheque issued was undated. Limitation to present for encashment of cheque was six months from the date of issuance i.e. from 7th March, 2005, but the cheque has been presented for encashment much after the period of limitation and time barred cheque has been used. Learned counsel further submits that the complainant was under obligation to prove dishonour of cheque of Rs.4 lakhs, but he has failed to prove the aforesaid fact. Therefore, both the Courts below have rightly

held that the accused is not liable for dishonour of cheque of Rs.4 lakhs.

7. On the other hand, Miss Sharmila Singhai, learned counsel for the complainant, opposed the criminal revision and supported the claim of complainant Balram Kishore Tandon that the cheque was issued for debt/discharge of liability and the Court below has rightly convicted and sentenced the accused. Learned counsel submits that finding of both the Courts below relating to cheque of Rs.4 lakhs that the complainant has not proved the dishonour of aforesaid cheque is contrary to the evidence and both the Courts below were too technical only on the ground that name of the bank has not been mentioned in Ex.P-3. Both the Courts below have not held the accused liable for dishonour of the aforesaid cheque and thereby committed illegality.

8. These are criminal revision under Section 397 read with Section 401 of the Cr PC and petition under Section 482 of the Cr PC. Concurrent finding of facts of both the Courts below are not liable to be disturbed without any cogent reason.

9. As regards the cheque, issuance of cheque and liability of the accused, the accused has not taken such defence before the Court below, inter alia, in his statement under Section 313 of the Cr PC, he has taken specific defence that both the cheques were kept in the petrol pump. As per defence of the accused, even he has not handed over any cheque to the complainant. But by adducing evidence, the complainant has specifically proved the fact that the accused has given two cheques of Rs.9 lakhs which were presented for encashment. As per Ex.P-3 and evidence of Janmejay Jena (CW-2), Ex.P-3, the alleged intimation of dishonour of cheque is not related to the cheque Ex.P-1. The cheque Ex.P-1 reveals that same is related to ICICI Bank, Bilaspur Branch. Ex.P-3 reveals that cheque No.513685 has been issued by State Bank of Indore. After examination of Janmejay Jena (CW-2) - Branch Manager of State Bank of Indore, Branch Sirgitti, the complainant was under obligation to examine the person who has issued Ex.P-3 or other witness to prove that Ex.P-1 was presented for encashment and same was dishonoured. But for the reasons best known to the complainant, the complainant has not examined any witness.

10. In these circumstances, finding of both the Courts below that the complainant has failed to prove dishonour of cheque of Rs.4 lakhs i.e. Ex.P-1 is not contrary to the evidence. As per evidence of the complainant, the accused has given two cheques of Rs.9 lakhs. Even as per Ex.D-1, the document produced and relied upon by the accused, two cheques have been issued by the accused for payment of Rs.9 lakhs. Ex.D-1 does not reveal that same was issued for security or guarantee, virtually same was issued for payment of Rs.9 lakhs. As per contents of Ex.D-1, in case Rs.9 lakhs are paid to the complainant, the complainant was required to return the cheques to the accused. This clearly reveals that it was only for payment of Rs.9 lakhs and not for any security or guarantee.

11. While convicting and sentencing the accused under Section 138 of the Act and awarding compensation of Rs.9 lakhs, the Courts below have not committed any illegality. Finding of both the Courts below is based on legally permissible evidence. I do not find any ground for interference in exercise of revisional jurisdiction and also in exercise of inherent jurisdiction.

12. Consequently, Criminal Revision No.578/2010 filed on behalf of accused Sukhdev Prasad Tandon and Criminal Misc. Petition No.891/2010 filed on behalf of Balram Kishore Tandon are liable to be dismissed and they are hereby dismissed.

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