
(1992) 09 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 699 of 1991

Amar Nath Singla

APPELLANT

Vs

Savinder Singh

RESPONDENT

Date of Decision : 10-09-1992

Acts Referred:

Citation : (1992) 3 AICLR 668 : (1993) 1 RCR(Criminal) 134

Hon'ble Judges : S.K.Jain, J

Advocate : Ashok Aggarwal, I.P.S. Sidhu, Advocates for appearing Parties

Judgement

S.K. Jain, J.

1. Amar Nath petitioner filed a complaint under Section 420 of the Indian Penal Code against Savinder Singh, respondent herein, on the ground that on 23.2.1988 he came to the former and persuaded him to deliver Rs. 4600/ against cheque No. QEE 769484, drawn on the Punjab National Bank representing that the bank had closed and he was in dire necessity of the money. The petitioner delivered him Rs. 4600/ on such representation. Again, on 23.3.1988, the respondent on the similar representation received Rs. 4000/ from the petitioner against cheque No. QEE 769485. These cheques when presented in the bank were dishonoured on 9.5.1988. When he approached the respondent, he assured him that he will deposit the amount in question and then he could get his cheques encashed. Since no amount was deposited in the bank by the respondent and the cheques were not encashed, the filing of the complaint was necessitated.

2. In preliminary evidence, besides himself, the complainant examined Ashok Kumar, Rishi Nandan Sharma, Manager of the Punjab National Bank, and Dawan K.S. Puri, Document Expert. On the basis of oral evidence and cheques Exhibits PA and PB, the Judicial Magistrate Ist Class, Patiala, vide his order of May 9, 1990, directed that the accused be chargesheeted under Section 420 of the IPC.

3. This order was challenged by the respondent in Criminal Revision No. 71/91

dated 26.7.1990 before the Additional Sessions Judge, Patiala, who accepted the revision petition vide his order dated 31.7.1991 and set aside the order of the Judicial Magistrate Ist Class, Patiala. This order of July 31, 1991, passed by the Additional District Judge, Patiala, has been impugned in this revision petition before this Court.

4. I have heard the rival arguments of the learned Counsel for the parties and have also perused the material on record.

5. Learned Counsel for the petitioner has vehemently argued that the Additional District Judge, Patiala, had gravely erred in setting aside the well reasoned order of the Magistrate directing that the respondent be charge sheeted under Section 420 of the Indian Penal Code. On the other hand, learned Counsel for the respondent has argued supporting the impugned judgment.

6. The impugned order of the Additional District Judge would show that he has not at all discussed the material on the basis of which the Magistrate had ordered the framing of charge under Section 420 IPC against the respondent. After giving the facts of the case and details of the order passed by the Magistrate, the Additional District Judge has proceeded to discuss the arguments advanced before him on behalf of the petitioner and then based his conclusions on conjectures and surmises which fact is evident from the combined reading of para 6 of this judgment and para 4 of the order of May 9, passed by the Magistrate.

The Additional District Judge in para 6 of the judgment stated that :

"If Savinder Singh was having any deposits in the bank on the dates when the cheques were issued, there was no necessity for him to borrow money from the respondent and issue cheques on that very dates. He could straight away go to the bank and withdraw his own amount. This shows that post dated cheques were issued by him and the amount was received without any inducement to Amar Nath. Certainly, Amar Nath must have agreed to advance money on the basis of postdated cheques. Line of cross examination of Amar Nath also indicates that on the marriage of girl TV was purchased through Amar Nath for a sum of Rs. 4000/. on 19/20.2.1988. This shows that Savinder Singh was not in a position to make payment of TV on 19/20.2.1988 and through the intervention of Amar Nath he purchased TV but issued postdated cheques to ensure payment."

In para No. 4 of his order, the Magistrate has stated that it had come in the evidence of Amar Nath appearing as PW1 that on the representation made by the accused on 23.2.1988 and 23.3.1988 and his having delivered two cheques to him he had paid Rs. 4600/ and Rs. 4000/ respectively on the said two dates to the accused. His testimony stands corroborated by Ashok Kumar PW2. Cheques Exhibit PA dated 23.2.1988 and Exhibit PB dated 3.3.1988 have been proved on record by Rishi Nandan Sharma, Manager of the Bank. It has come in his testimony which is based on the record including the statement of account Exhibit PG that when the cheques Exhibit PA and PB were presented they could

not be encashed for want of deposit in the account, and that neither on 23.2.1988 or not on 23.3.1988 any amount was lying deposited in the account of the accused.

The signatures of the accused on the cheques in question have been proved by PW4 Dewan K.S. Puri, Document Expert, vide his report Exhibit PW4/A.

Thus, the conclusion of the Additional District Judge that postdated cheques had been issued by the accused to the complainant and that the complainant had agreed to advance money on the basis of postdated cheques is not supported by any evidence on record and is patently wrong. In the latter part of para 4 of this order, the Magistrate has mentioned that there was no evidence on record on the basis whereof it could be stated that the complainant got the T.V. purchased to the accused on credit from the TV shop situated on Goshala Road, Patiala, and for that reason the plea of the accused that he issued the cheques in favour of the complainant by way of security could not be accepted. There is also nothing on the file to show that the accused had made any payment to the T.V. dealer at any point of time.

7. In view of the above discussion, I am of the opinion that the order dated 31.7.1991 passed by the Additional District Judge, Patiala, was not sustainable in the eye of law being not supported by evidence on the record. It is, therefore, set aside. The order dated 9.5.1990 passed by Judicial Magistrate Ist Class, Patiala, is upheld. This revision petition is allowed.

The parties, through their counsel, are directed to appear before the Court below on 30.9.1992.