(2017) 02 DEL CK 0321

In the Delhi High Court

Case No : 237 of 2016

VIRENDER SONI — APPELLANT

Vs

THE STATE NCT OF DELHI & ANR — RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 251 - Power to examine the accused - Substance of accusation to be stated
Negotiable Instruments Act, 1881, <a hr

Citation : (2017) 02 DEL CK 0321

Hon'ble Judges : S.P.Garg

Bench : SINGLE BENCH

Advocate : Sudarshan Rajan, Archit Arora, Arjun Gadhoke, Ramesh Rawat, Manjeet Arya

Judgement

1. Challenge in this revision petition is a judgment dated 02.03.2016 of learned Additional Sessions Judge in Crl.A.No.60/2015 by which judgment dated 27.08.2015 and sentence order dated 28.10.2015 in CC No.79/1/14 instituted under Section 138 Negotiable Instruments Act were upheld. The petition is contested by the complainant/respondent.

2. I have heard the learned counsel for the parties and have examined the file. Admitted position is that a complaint case under Section 138 Negotiable Instruments Act was instituted by the respondent against the petitioner. In the complaint, the respondent averred that in the discharge of legally enforceable liability, the petitioner had issued a cheque for the sum of Rs.21.5 lacs bearing No 978785 dated 28.03.2010 drawn on Syndicate Bank, Dev Nagar, New Delhi in his favour. On presentation, the cheque was dishonoured due to ''insufficient funds''. Despite issuance of legal notice dated 31.5.2010, the petitioner failed to pay the amount within the stipulated time. The respondent examined himself as CW-1. In 313 Cr.P.C. statement, the petitioner denied issuance of the cheque in question. He examined DW- 1 (Deepak Jain) in defence. The trial resulted in his

conviction. The appeal preferred against the conviction did not find favour before the appellate court and was dismissed.

3. Learned counsel for the petitioner urged that the impugned orders cannot be sustained as the Trial Courts overlooked the crucial point if the respondent had paying capacity to advance Rs.21.50 lacs to the petitioner. No such amount was reflected by the respondent in the Income Tax Returns. He, being a petty newspaper vendor, did not have financial capacity to give huge loan to the petitioner. It was further urged that the petitioner at the time of taking a loan of Rs.3.5 lacs from the respondent in 2007, had issued a blank cheque as a ''security''. The said loan was repaid in 2009 but the respondent did not hand over the cheque on the pretext that it was lost. The said cheque has been misused.

4. Learned counsel for the respondent urged that the courts below have given plausible reasons to base conviction and there are no sound reasons to disturb the concurrent findings.

5. Admitted position is that both the petitioner and the respondent were acquainted with each other and were childhood friends; they were neighbours too. It has come on record that there used to be financial transaction/dealings between the two prior to the transaction in question. In response to the notice under Section 251 Cr.P.C. dated 1.5.2012, it was the defence of the petitioner that he had taken a loan of Rs.3.5 lacs from the complainant in June-July, 2007. In lieu of granting of loan, the complainant had obtained the impugned blank signed cheque and an affidavit from him. The loan was granted at a monthly interest @ 5% and the interest was paid upto July, 2009. It could not be paid subsequently due to loss in the business. He, thereafter, tried to settle the dispute with the complainant but in vain. Apparently, there was transaction between the petitioner and the respondent way back in 2007.

6. The respondent filed his evidence by way of affidavit (Ex.CW- 1/A) and reiterated the version given in the complaint. In the crossexamination, he admitted that he was a newspaper vendor for the last about eight years. He had rented a work shop to work there as a gold smith. He elaborated that the petitioner had demanded Rs.35,00,000/- but he was able to arrange Rs.21.50 lacs from his relatives and had given it to the petitioner without interest. No written agreement/document regarding payment of Rs.21.50 lacs was prepared/ executed. He further admitted that this amount was not reflected in the Income Tax Returns. He denied the suggestion that no such payment was given to the petitioner. Suggestion was given that the payment of Rs.3.50 lacs was given in 2007 and a blank cheque was issued in lieu of it.

7. On perusal of the entire testimony of the respondent as CW-1, nothing has come on record to show that he was not having financial capability to advance a loan of Rs.21.50 lacs to the petitioner. No such suggestion, whatsoever, was put to the respondent in the cross-examination. When the respondent had financial

capacity to advance loan of Rs.3.5 lacs, as claimed by the petitioner in 2007, it cannot be inferred that he had no sufficient means to arrange Rs.21.50 lacs in the year 2009. The respondent has claimed that besides working as newspaper vendor, he also used to work as gold smith.

8. Issuance of cheque in question is not in dispute. The petitioner''s only contention is that it was handed over in lieu of advance of Rs.3.5 lacs in the year 2007. The petitioner has given contradictory statements in this behalf. It is not clear as to how much amount was advanced by the respondent to the petitioner in 2007. In response to the notice under Section 251 Cr.P.C. it was claimed that amount of Rs.3.5 lacs was given in the month of June/July, 2007. The petitioner did not claim if the whole amount was returned in 2009. It was merely stated that interest @ 5% per month was given to the petitioner till July, 2009. No documents, whatsoever, have been placed on record regarding payment of interest to the petitioner. In the cross-examination of CW-1, it was suggested that payment of Rs.3.5 lacs was given to the petitioner in 2007. In his 313 Cr.P.C. statement altogether different defence has been taken by the petitioner. He came up with the plea that he had given four cheques to the complainant and only one of them was signed by him. The said cheque was not presented by the complainant till date. He further stated that he had taken an amount of Rs.3.5 lacs from the complainant and it was returned along with interest on 10.01.2009. The petitioner, however, has failed to place on record any document, whatsoever regarding the taking of loan of Rs.3.5 lacs and its return along with interest. Apparently, transactions between the parties were based upon trust and were not being reduced into writing.

9. In response to the notice under Section 138 Negotiable Instruments Act, the petitioner had claimed that Rs.3.5 lacs were taken in 2007 and he had issued a blank cheque along with a blank stamp paper as ''security'', though the said amount was repaid in February, 2009 but the cheque was not returned. Nothing has come on record if the petitioner had ever demanded the blank cheque allegedly issued by him at the time of repayment of loan in February, 2009.

10. Considering the conflicting versions given by the petitioner at different stages of the trial, it appears that he has not presented true facts. Concurrent findings of the courts below are based upon fair appreciation of evidence and need no disturbance or intervention.

11. The petitioner has been sentenced to undergo Simple Imprisonment for one year with fine/compensation of Rs.21.50 lacs to the complainant; default sentence being Simple Imprisonment for six months. It is informed that the petitioner is not a previous convict and has already undergone substantial period of substantive sentence.

12. Considering the facts and circumstances of the case, the sentence order is modified and the default sentence for non-payment of fine/compensation would be Simple Imprisonment for three months. Other terms and conditions of the

sentence order are left undisturbed.

13. The Revision Petition stands disposed of in the above terms.

14. All pending application(s) also stand disposed of

15. Trial Court record be sent back forthwith along with the copy of the order.

