

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-491-MA of 2014 (O&M)

Date of Decision: 10.2.2015

Kuldeep Singh

....Petitioners

vs.

Dharam Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. S.S. Swaich, Advocate
for the petitioner.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgement should be reported in the Digest?*

Kuldip Singh J.(Oral)

Learned counsel for the petitioner contends that the cheque in question was dishonoured for want of sufficient funds as well as on the ground that there is an alteration in the amount which requires signature. Learned counsel has produced photo-copy of the cheque wherein there is an over-writing over the amount in digits and over the date also. The trial Court made following observations:-

“Perusal of the Cheque Ex.C-1 reveals that in the present case there is a clear cutting on the date wherein the date was initially written was 15.12.2009 and year is then changed to 2011 after cutting. There is overwriting on the amount which is shown as 2,90,000/- and also on the main signatures under date. The accused has categorically denied his signatures under the date”

The trial Court also came to the conclusion that complainant has failed to explain the alteration and counter-signing of the date by the accused. Consequently, the complaint filed under Section 138 of Negotiable Instruments Act, 1881 was dismissed.

I have heard learned counsel for the petitioner and gone through the case filed very carefully.

Learned counsel for the petitioner relied upon the Supreme Court Judgment “ **Veera Exports vs. T. Kalavathy**” (2002) 1 SCC 97 and has also relied upon under Section 87 of the Negotiable Instruments Act, 1881. The relevant observations obstruct from the judgment are as follows:-

“Effect of material alteration- Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee- And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of Sections 20,49,86 and 125.”

The first paragraph of Section 87 makes it clear that the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration e.g. if the drawer of the cheque himself altered the cheque for validating or re-validating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto. Further, even if the payee or the holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resisit the right of the payee or the holder thereof. It is always a question of fact whether the alteration was made by the drawer himself or whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed.”

After going through the photo-copy of the cheque and observations, I am of the view that there is a clear overwriting over the date and overwriting on the amount also. Since the cheque was not valid, complaint filed under Section 138 of Negotiable Instruments Act, 1881 was rightly dismissed.

Accordingly, application under Section 378 (4) of the Code of Criminal Procedure for grant the special leave to appeal from the impugned order of acquittal dated 13.12.2013 passed by learned trial Court, stands dismissed.

10.2.2015
Ishant

(KULDIP SINGH)
JUDGE