

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-10167-2014

Date of decision : 16.01.2015

Smt.Premo Devi

... Petitioner

Versus

Smt. Daya Rani

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Akshay Jindal, Advocate
for the petitioner.

Mr.V.B. Aggarwal, Advocate
for the respondent.

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') lays challenge to order dated 17.02.2014 passed by the Judicial Magistrate Ist Class, Karnal whereby the application filed by the petitioner-accused for examination of her signature on the cheque in dispute by an expert has been disallowed.

The respondent-complainant filed the complaint under Section 138 of the Negotiable Instruments Act on the premise that the accused purchased cement on credit basis and amount of Rs.7,21,430/- was outstanding against her upto 23.09.2010. The accused issued the cheque in question in regard to outstanding balance of aforesaid amount which got dishonoured on its presentation to the bank and the accused failed to pay the cheque amount despite receipt of legal notice.

Counsel for the petitioner would contend that as the petitioner has denied issuance of cheque in dispute, he is entitled to lead evidence in defence to establish her plea that the cheque in question does not bear her signatures. It is further submitted that the learned trial Court has wrongly relied upon the judgment of Delhi High Court ***S.Minz Vs. Madhu Bala Gupta, 2013(1) Civil Court Cases 708*** to deny the petitioner an opportunity to examine an expert. The order passed by the trial Court may be set aside and the petitioner may be permitted to avail services of an expert to compare the disputed signatures on the cheque with the standard / admitted signatures of the petitioner.

Counsel for the respondent, on the other hand, has argued that there is no evidence adduced by the banker of the petitioner that signature on the cheque in question were not verified before returning the cheque in question as dishonoured, therefore, the petitioner cannot seek any aid to his contention from the judgment of Hon'ble the Supreme Court of India ***Kalyani Baskar Vs. M.S.Sampoornam, 2007(1) RCR(Criminal) 311*** also referred to in the judgment of the Delhi High Court relied upon by the trial Court. It is further argued that the petitioner has neither denied that the cheque book of which the cheque in question is a part was not issued to her by her banker nor any plea has been raised during cross-examination of the complainant as to how the cheque belonging to the petitioner could reach hands of the complainant if it was not issued by her and handed it over to the complainant by her son.

I have heard counsel for the parties and perused the records.

Smt. Daya Rani filed the complaint and her husband Sh.Madan

Lal appeared in the witness box. During cross-examination of Sh.Madan Lal, there is no such fact elicited as to how the complainant came in possession of the cheque in dispute if it was not issued by the accused. No such plea has been raised that the cheque does not bear signatures of the petitioner-accused. The accused has admitted business transaction between the parties as it was suggested to the complainant that before filing of the complaint, there was a meeting between the complainant and the accused and in the said meeting, the accused has already paid the outstanding amount in cash.

Indisputably, the cheque in question was dishonoured with the remarks "funds insufficient" meaning thereby that on verification of signatures in question with the standard signatures of the account holder available with the bank, no discrepancy was found. The petitioner has not examined an officer from her bank to prove that the bank officer did not verify signatures on the cheque in question like the fact proved in the case of *Kalyani Baskar's case (supra)* decided by Hon'ble the Supreme Court of India.

In absence of any plea by the accused during cross-examination of the complainant that the cheque does not bear her signatures and evidence of her banker that signatures on the cheque being not verified at the time of return of cheque with the remarks 'funds insufficient', I do not find any error in the order passed by the trial Court while relying upon the judgment of the Delhi High Court in *S.Minz's case (supra)*.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed leaving the parties to

bear their own costs. However, nothing stated in this order shall prejudice final adjudication of the case on its merits by the trial Court.

(REKHA MITTAL)
JUDGE

January 16, 2015.

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