

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M No.29032 of 2013 (O&M).

Date of Decision: May 05, 2015.

M/s Aggarwal Traders and another ...Petitioners.

VERSUS

M/s Oswal Premium Synthetics Pvt. Ltd. ...Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Rajeev Joshi, Advocate for the petitioners.

Mr. O.P. Goyal, Sr. Advocate with
Mr. R.S. Kang, Advocate for the respondent.

SNEH PRASHAR, J.

CRM-7406-2015

Allowed, as prayed for.

CRM-M-29032-2013

This petition invoking the provisions of Section 482 of the Code of Criminal Procedure (in short, “Cr.P.C.”) was filed by M/s Aggarwal Traders and its Proprietor Satish Kumar Aggarwal, for quashing

of the order dated 01.06.2013 passed by learned Additional Sessions Judge, Ludhiana and the order dated 10.09.2012 passed by learned Judicial Magistrate Ist Class, Ludhiana, dismissing their application for examination of a handwriting and document expert in their defence evidence for analysis of the cheque in respect of which respondent M/s Oswal Premium Synthetics Private Limited, had filed a complaint under Section 138 of the Negotiable Instruments Act (in short, "N.I. Act").

2. The petitioners alleged that the respondent filed a complaint on the basis of a forged cheque which had been tendered in evidence as Ex.C5. The date of the cheque had been changed from '15.1.2008' to '15.11.2008'. Photostat copy of the cheque retained by them (petitioners) had been produced as 'Mark-D1', in which it is clear that the date of the cheque was '15.1.2008'. By adding digit '1' in the column of month, the date of the cheque had been changed to '15.11.2008'.

The prayer of the petitioners was opposed by the respondent (complainant in the case under Section 138 of N.I. Act) before learned Judicial Magistrate Ist Class, as well as in the revision petition filed by the petitioners before learned Additional Sessions Judge, Ludhiana and in the instant petition filed before this Court.

3. Heard the submissions made by Mr. Rajeev Joshi, learned counsel representing the petitioners and Mr. O.P. Goyal, learned senior counsel representing the respondent.

4. At the very outset, it was submitted by learned counsel for the petitioners that the original cheque carried a date of '15.1.2008'.

Subsequently, without the knowledge and consent of the petitioners, the respondent-complainant by interpolation changed the date on the cheque from '15.1.2008' to '15.11.2008' by adding digit '1' to the existing date. The material alteration made in the date of the cheque without consent of the petitioners had rendered the cheque invalid as per the provisions of Section 87 of N.I. Act. Faced to the situation, it was necessary for the petitioners to prove the forgery committed by the respondent-complainant and for the said purpose, the petitioners had filed application for examination of the original cheque by handwriting and document expert. The witnesses have to be examined in defence by the petitioners and that will not prejudice the right of the respondent-complainant in any manner because he will get adequate opportunity to cross-examine the witness. Learned counsel urged that examination of the expert is also necessary for just and proper decision of the case.

5. On the other hand, learned counsel for the respondent argued with vehemence that issuance of the cheque had not been denied by the petitioners. The amount mentioned in the cheque and the signatures on the same have also not been denied. At no stage, they challenged the summoning order passed by learned trial Court. With the said admissions in the backdrop, there is no occasion for the petitioners to get the cheque examined by a handwriting and document expert. It is only to prolong the proceedings that an application for examining a handwriting and document expert has been filed.

6. Learned counsel further argued that the allegation of the

petitioners that the date on the cheque was '15.1.2008' which by interpolation has been changed to '15.11.2008', has no base to stand on as they have no firm stand with regard to the date written on the cheque. In the First Information Report No.1084 dated 27.11.2011 under Sections 420/406 of the Indian Penal Code (in short, "I.P.C.") got registered by the petitioners, it was mentioned that cheque bearing no. 889750 dated 15.01.08 drawn on Bank of Rajasthan Limited, Hisar, in the sum of Rs.5,00,000/- was given to M/s Oswal Premium Synthetics Private Limited (respondent-complainant). On the contrary, in the application filed by them before learned trial Court for getting the cheque examined from handwriting and document expert, it was pleaded that by interpolation the date on the cheque had been changed from '15/1/2008' to '15/11/2008'. It was not mentioned that the date on the cheque was '15.01.08'. Later on, petitioner No.2 Satish Kumar Aggarwal appeared in the witness box. In his defence, he stated that he had given the cheque by filling the date as '15.8.2001'. He further stated that they (respondent-complainant) had forged the date from '15.8.2008' to '15.11.2008'. As per the deposition of petitioner Satish Kumar Aggarwal, the date on the cheque was '15.8.2001' whereas in his application he stated that it was '15.1.2008'. When the stand taken by the petitioner with regard to the date is not consistent and firm, it will be no use of asking for examination of the cheque by a handwriting and document expert. To support his arguments, learned counsel relied upon ***Veera Exports vs. T. Kalavathy, 2002(1) R.C.R. (Criminal) 221; S.Gopal vs. D. Balachandran, 2008(2)R.C.R. (Criminal)467; and Bhadauria Tiles vs.***

Ramkumar Singh Kushwah, 2012 ACD 323.

7. Lastly, it was argued by learned counsel for the respondent-complainant that he has produced on file the lesser account of the respondent company, according to which there was no entry between 10th January, 2008 and 18th January, 2008, which means that no cheque was received by the company in between the said two dates. There was also no entry in the lesser account after 12th November, 2008. Since the cheque was received on 15.11.2008, it was presented in the bank on 06.05.2009 within six months from the date of issuance, which bounced and was returned by the bank on 07.05.2009. Thereafter, notice was given to the petitioners on 08.05.2009 which they refused to accept which indicates that there was no dispute with regard to the date on the cheque.

8. The sole issue before this Court is whether the petitioners can be allowed to examine a handwriting and document expert to prove their allegation that the date on the cheque in question was '15.1.2008' but by interpolation the date had been converted to 15.11.2008 by adding the digit '1' in the column of month by the respondent. It is apparent from the order of learned trial court that the case had reached the stage of defence evidence when an application seeking to examine the handwriting and document expert was filed by the petitioners. Indeed, the fact of issuance of the cheque, signatures on the cheque and the amount written on the cheque are not denied by the petitioners, but the said admission by no stretch of imagination precluded them from disputing the date written on the cheque and from producing required evidence to prove the interpolation they

alleged has been done in the date mentioned on the cheque. The facts of the case are distinguishable and the proposition of law laid down in the case relied upon by learned counsel for the respondent-complainant cannot be extended to the facts and circumstances of this case. The controversy between the parties is not whether the alteration in the cheque was made with or without consent of the parties/signatory of the cheque. The examination of the cheque is also not being asked for, to determine the age of the ink used. It is also not the prayer of the petitioners that examination of the cheque by a handwriting and document expert concerning portion of the cheque where date, amount etc. is written, is necessary for proving that the said columns were filled by somebody else.

9. The application of the petitioners is aimed at proving the interpolation in the column of the date written on the cheque. It is submitted by learned counsel for the petitioners that a handwriting and document expert, using the techniques of micro-spectrophotometry and other such like techniques, can chemically examine and differentiate the inks used on a document and that can prove whether the digit '11' in the date written on the original cheque was written at the same time or not. The proposition of law laid down by Hon'ble Supreme Court in **T. Nagappa vs. Y.R. Muralidhar, 2008(3) R.C.R. (Criminal) 926** is applicable to the case in hand on all its fours. It was a case of dishonour of the cheque under Section 138 of N.I.A. Act. The defence of the accused was that the figure of Rs.50,000/- in the cheque had been changed to Rs.7,50,000/- by the complainant. The accused requested that the opinion of the expert may be called but his request was

rejected by the trial court in view of presumption raised under Section 139 and 20 of N.I. Act. Setting aside the order of rejection, it was observed by the Hon'ble Apex Court as follows:-

“When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it.

An accused has a right to fair trial. He has a right to defend himself as a para of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section 243 of the Code of Criminal Procedure.”

X X X X X
X X X X X
X X X X

It was further held as follows:-

“What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bonafide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to

summoning of witnesses etc. If permitted to do so, steps therefore, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant.”

10. In the operating portion of its order dated 10.09.2012, the findings of learned trial court were as under:-

“So far as the question of adding the digit 1 on the cheque in column of month is concerned that can be dealt with during the trial by adducing the evidence.”

It is for proving the aforesaid contention that digit '1' had been added in the column of month in the date written on the cheque to make it read as '15.11.2008' that the petitioners intend to produce the evidence of the handwriting and document expert. As far as the contention of the respondent that there is variation in mentioning the date of cheque in the First Information Report lodged by the petitioner, the application given by them and the statement of petitioner No.2 Satish Kumar Aggarwal, is concerned, that need no consideration. The dates in all the documents and at every stage had been mentioned only to speak out one allegation that unequivocally emerges from the said document that by interpolation on the cheque had been changed from '15.1.08' to '15.11.2008'. In the deposition made by the respondent before learned trial court there appears to be some typographical mistake because while in the beginning of the statement it was stated that the date had been changed from '15.8.2001' to '15.11.2008' but in the further statement it was correctly stated by petitioner No.2 Satish

Kumar Aggarwal that the company by playing fraud had itself changed the date from '15.1.08' to '15.11.2008'.

11. Consequent to the above discussion, the impugned order dated 10.09.2012 passed by learned trial court and the order dated 01.06.2013 passed by learned Additional Sessions Judge, Ludhiana are set aside and the petitioners are allowed to get the cheque in question examined from a handwriting expert to the limited extent of examination of the date on the original cheque in question.

Accordingly, the instant criminal miscellaneous petition is allowed.

(SNEH PRASHAR)
JUDGE

May 05, 2015
jitender