

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: January 07, 2015

+ **CRL.M.C. 4569/2013 & Crl.M.A. No.16361/2013**

GUNENDER KUMAR JAIN Petitioner

Through: Mr. Prem Kumar, Mr. Rajiv
Sharma, Mr. Rakesh Kumar &
Ms. Sakshi Sachdeva, Advocates

versus

HERITAGE DESIGN PVT. LTD. & ANR. Respondents

Through: Mr. Dharmendra Priani &
Mr. Akshay Kapoor, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

In proceedings under Section 138 of *The Negotiable Instruments Act, 1881* pertaining to cheque of ₹44 lacs odd, application of petitioner/accused for sending the cheque in question to an expert to obtain an opinion regarding history of the writing on the cheque, has been declined by the trial court as well as by the Revisional Court.

At the hearing, learned counsel for petitioner had vehemently submitted that both the courts below have palpably erred in observing that issuance of cheque in question and the signatures thereon are not disputed. Learned counsel for petitioner contended that only the signatures on the cheque in question are admitted but the writing

thereupon is disputed. It was pointed out that in the first instance, cheque in question was returned back to the respondent-complainant with the remarks that “*the cheque was mutilated*” and after furnishing of bank guarantee, it was again tendered by the complainant/respondent in order to cheat the petitioner. It was pointed out that the cheque in question is forged and fabricated and it is evident from the cheque number that this cheque was for ₹80,000/- only and it was encashed on 17th October, 2000 by Asha Fab.

For the first time, learned counsel for petitioner had placed on record photocopy of Statement of Accounts from petitioner’s banker and had submitted that for fair trial, an opportunity ought to be granted to petitioner to prove the afore-said Bank’s Statement of Account and covering letter of 13th December, 2008. Reliance was placed upon decisions in *T. Nagappa Vs. Y.R. Muralidhar* (2008) 5 SCC 633 and *G. Someshwar Rao Vs. Samineni Nageshwar Rao & anr.* AIR 2009 SC (supp) 2050 to submit that an opportunity must be granted to accused for adducing evidence to rebut statutory presumption raised against petitioner/accused. Thus, it was submitted that the impugned orders are liable to be quashed and petitioner’s application ought to be allowed to obtain an expert opinion regarding the cheque in question and to prove the Statement of Account of petitioner’s banker.

Learned counsel for respondent submitted that there is no infirmity in the impugned orders and petitioner’s witness *Ajay Kant (DW-2)* has already deposed in evidence that petitioner used to only sign the cheques in Hindi and rest of the columns were filled up by the staff and the stand taken by petitioner is contrary to the stand taken at the initial stage and at

the stage of recording of statement under Section 313 of the Cr.P.C. It was pointed out that petitioner has categorically maintained till now that the cheque in dispute was given as blank signed cheque for the purpose of security and not towards existing debt or liability. Lastly, it was submitted on behalf of the respondent that decisions relied upon are of no avail to the case of the petitioner in view of the aforesaid stand taken by petitioner at trial. In support of his submissions, learned counsel for respondent placed reliance upon decisions in *Union of India Vs. Jyoti Prakash Miter* AIR 1971 SC 1093 & *Ravi Chopra Vs. State & anr.* 2008 [2] JCC [NI] 169.

After having heard both the sides and on perusal of the impugned orders, material on record and the decisions cited, I find that it is open to an accused to obtain an expert opinion to rebut the statutory presumption raised against him in proceedings under the *Negotiable Instruments Act* but in the instant case, I find that the decisions relied upon by petitioner are of no avail for the reason that the stand taken by petitioner from the very beginning is that the cheque in question was issued as a security cheque. Regarding the writing on the cheque in question, petitioner's witness *Ajay Kant (DW-2)* has already deposed that petitioner used to sign the cheques in Hindi and rest of the cheque was filled up by the staff. On the aspect of Statement of Account of petitioner's banker, this Court finds that the series of the cheque reflected in the afore-said Statement of Account of petitioner is not given and so, it cannot be said that it was the same cheque, which was encashed in the year 2000.

In view of the aforesaid, petitioner's application for getting an expert opinion in respect of the cheque in question has been rightly

declined by the courts below and there is no perversity in the orders of the courts below.

This petition and application are accordingly dismissed while making it clear that any observations made in this order shall have no bearing on merits of the case at trial.

(SUNIL GAUR)
JUDGE

JANUARY 07, 2015

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