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

+ **Date of Decision: 05.01.2015**

% **CRL.L.P. 6/2015 & CRL MA 71/2015**

M/S JAWAHAR CHIT (P) LTD

..... Petitioner

Through: Mr. Sanjeev Chauhan, Advocate

versus

RITIKA CHAUDHARY

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The applicant has moved this application under Section 378(4) Cr PC for grant of leave/permission to file criminal appeal against the judgment and order dated 20.09.2014 passed by Sh. Anurag Thakur, MM, Dwarka Court in Case No.392/2012 (Old CC No.23524/11 dated 08.03.2011 under Section 138 of Negotiable Instruments Act). By the impugned order, the complaint preferred by the applicant has been rejected and the respondent/accused was acquitted.

2. The case of the complainant was that it is a Chit Fund company and that the accused was a member of the chit bearing No.JCH VI

having total value of 2 lacs, of 25 instalments. It was alleged that the accused had only paid 9 instalments and 16 instalments were due. In discharge of her liability, the accused issued the cheque in question for Rs.2,11,761/- dated 21.09.2010, which, on presentation for payment was returned unpaid by the payee bank vide return memo dated 07.01.2011 for the reason "Funds Insufficient". Despite service of notice dated 03.02.2011, the accused failed to make payment towards the cheque in question within the statutory period and, accordingly, the complaint had been preferred. Upon being summoned, the accused entered appearance. Notice under Section 251 Cr PC was framed on 02.03.2012. The parties led their respective evidence.

3. The learned MM framed the following issues for his consideration:

- i) Whether the cheque in question was issued by the accused?
- ii) Whether the accused had any liability towards the complainant?
- iii) Whether legal notice was duly served upon the accused?
- iv) Whether the complaint is bad in law being filed by an unauthorised person?

4. Issue nos.2, 3 and 4 were decided in favour of the complainant. However, on the first issue, the finding returned is that the cheque in question had not been issued by the accused. Consequently, the

complaint has been rejected. The learned MM observed that in answer to the question put to her at the time of framing of notice under Section 251 Cr PC, the accused had denied her signature on the cheque in question. Even in her statement under Section 313 Cr PC, the accused had stated that she had never issued the cheque in question nor had she signed anywhere on the cheque (Exh PW-1/1). The accused moved an application for referring the cheque in question for opinion of the handwriting expert. The said application was allowed vide order dated 03.01.2014 and the document was referred to the FSL.

5. The report of the FSL dated 06.06.2014 was received. The Asst. Director (Documents) FSL, Delhi found that *“The person who wrote the blue enclosed signatures stamped and marked A1 to A3 did not write the red enclosed signatures similarly stamped and marked Q1 and Q2”*. The report stated that the divergences between the admitted signatures and the disputed signatures are fundamental in nature, and are beyond the range of natural variations and intended disguise and when considered collectively, lead to the aforesaid opinion. The learned MM admitted in evidence the said report by dispensing with the examination of Asst. Director (Documents), FSL, Delhi. The complainant did not dispute the findings of the FSL regarding the signatures. No application was moved by the complainant to cross examine the author of the report, or to contradict the finding of the report by examining an independent handwriting expert.

6. The learned MM was conscious of the fact that the opinion of the handwriting expert was not binding in nature, and that the Court could disregard the same if there are sufficient reasons to do so, since an expert witness and his opinion are only meant for assistance of the Court. The learned MM observed that on a careful examination of the disputed signatures and the admitted signatures, it appears that they have been made in two different styles and there are many variations in them which are visible even to the naked eye. Consequently, the learned MM held that the report of the FSL inspired confidence and that there was no reason to disbelieve the same. The said opinion was, accordingly, accepted by the MM.

7. Reliance placed by the complainant on *Santosh Kumar Gupta v. State & Anr.* passed by this Court in CRL MC 862/2011 was held to be not applicable to the facts of the present case.

8. Learned counsel submits that the witness from the concerned bank was not summoned, who alone could have deposed with regard to the genuineness of the signatures of the accused on the cheque in question. In this regard, he places reliance on the decision of this Court in *Kanshi Ram Bansal v. Suman Malhotra* in CRL MC 3876/2011 decided on 11.04.2012. This was a case where the complainant had led evidence and the statement of the accused under Section 313 Cr PC had also been recorded and the case was at the stage of defence evidence. An application was filed by the accused under Section 243(2) Cr PC for examination of handwriting expert in order to prove that the cheque in question – which formed the basis of

the complaint, is neither signed by her, nor had impression of her palm and fingers. The MM dismissed the said application vide order dated 11.07.2011 – observing that the accused had earlier filed an application under Section 311 Cr PC read with Section 45 of the Evidence Act, which had been dismissed vide order dated 23.04.2011. Another application under Section 45 and 73 of the Evidence Act seeking expert opinion had also been dismissed on 20.05.2011 with costs. The MM had observed that the issue pertaining to the examination of expert had already been dealt with in both the applications which had been dismissed, and so the same issue could not be raised again. The accused had then preferred a revision before the Court of the learned ASJ, who had passed the impugned order observing that the accused had the right to produce expert witness in defence. One opportunity was granted to the accused to examine the expert witness. It is that order which had been assailed before the High Court.

9. The Court allowed the aforesaid petition on the consideration that two earlier applications filed by the accused for the same relief had been dismissed by the Magistrate. The complainant was 78 years old and a direction had been issued by this Court for time bound disposal of the complaint. This Court found that the accused was adopting delaying tactics. Moreover, in that particular case, the MM had compared the signatures of the accused on the cheque in question, with the admitted signatures and did not find any variance – which is not the position in the present case. This decision, therefore, does not

advance the case of the applicant.

10. Learned counsel has further relied upon the decision of the Supreme Court in *Laxmi Dyechem v. State of Gujarat & Ors.*, (2012) 13 SCC 375. The Supreme Court, while agreeing with its earlier decision in *NEPC Micon Ltd. v. Magma Leasing Ltd.*, (1999) 4 SCC 253, held that the expression “*amount of money is insufficient*” appearing in Section 138 of the Act is a genus and dishonour for reasons, such as, “*account closed*”, “*payment stopped*”, “*referred to the drawer*” are only species of that genus, and such dishonour would be covered under Section 138 of the Act. Similarly, the ground that “*the signatures do not match*” would also constitute dishonour within the meaning of Section 138 of the Act”.

11. There could be no quarrel with the aforesaid proposition. However, in the present case, the accused denied having issued the cheque in question, and sought reference of the documents for expert opinion. The expert opinion clearly is that the specimen admitted signatures of the accused did not match the signatures on the document in question and differed in some fundamental respects. It was also opined that the divergences between the two signatures were beyond the range of, *inter alia*, intended disguise. The learned MM has also compared the signatures on the cheque in question with the admitted specimen signatures of the accused, and found that there are fundamental differences in the style. Thus, the finding returned by the learned MM that it was not established that the cheque had been issued by the accused, cannot be said to be erroneous. Consequently,

I find no merit in this petition.

12. Accordingly, the leave application is dismissed.

VIPIN SANGHI, J

JANUARY 05, 2015

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