IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11336 of 2014 (O&M)
Date of decision: January 18, 2016

Prakash Chand Saini

.... Petitioner..

Versus

Jai Prakash @ Dr. Prakash @ Raju

.... Respondent..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. APS Shergill, Advocate,
for the petitioner.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? (√)

Jaspal Singh, J. (Oral)

Through this petition preferred under Section 482 of the Code of Criminal Procedure, petitioner-Prakash Chand Saini has sought setting aside of order dated 20.02.2014 (Annexure P-6) passed by Additional Sessions Judge Faridabat in CRR No.71 of 2012 as well as order dated 09.08.2012 (Annexure P-5) passed by JMIC, Faridabad in Criminal complaint captioned as Parkash Chand Saini vs. Jai Parkash @ Dr. Parkash @ Raju" (Annexure P-3) vide which an application preferred by petitioner for sending cheque No. 660484 to Government Forensic Science Laboratory, Madhuban for determining and comparing the writing and ink qua the name, date and amount as well as signature, has been dismissed.

2. Assailing the impugned orders passed by both the courts below, it has been stressed by learned counsel for the petitioner that same are absolutely against the factual position. Both the courts below have miserably failed to appreciate the actual fact, which has caused serious prejudice to the petitioner. The ld. Trial court has also committed a grave error while coming to the conclusion that under proceedings of Section 138 of the Negotiable Instrument Act even if the signatures are admitted, the liability of issuer of the cheque stands and further cheque is given signed, the presumption is raised that the holder of the cheque has the liability against the issuer of the cheque in pursuance of his legal enforceable debt. But while making the aforesaid observation, the trial court as well as the revisional court failed to appreciate the fact that the complainant has given the blank cheque to the petitioner towards security and thereafter as per the compromise the complainant had returned the entire loan amount but the accused has misused the cheque in question. Learned counsel for the petitioner further contends that for the fair trial, the cheque is required to be sent to Forensic Science Laboratory, Madhuban, Karnal for the comparison of the handwriting, age of the ink etc. and the report of FSL would certainly throw light in this regard and would ultimately clinch entire controversy. Even otherwise, comparison of the cheque in question from the FSL is essential for the proper and effective adjudication in the matter in controversy. Thus, the impugned orders are liable to be set aside and consequently, application filed by the petitioner deserves to be accepted.

3. This Court has given a deep consideration to the aforesaid submissions made by learned counsel for the petitioner but finds the same to be without any legal and factual substance.

4. Undisputably, the cheque in question bearing No. 660484 bears the signatures of the petitioner. Though it has been alleged that it has been issued in consideration of security of the loan amount so borrowed by him from the respondent.

5. It is well settled that once, the signatures on the cheque were admitted, the burden shift upon the issuer of the cheque to prove under what circumstances, he issued the cheque or that the cheque has been issued just for a security and not in discharge of any legal enforceable debt. Moreover, in this case, the petitioner has taken a contradictory stand. On one hand, he admitted the signatures and on the other, he is denying the same while filing an application for sending the cheque to FSL, Madhuban for comparison. It is well settled that even if the cheque has been filled in by some other person but the signatures of the issuer are admitted, the liability of the issuer of the cheque stands admitted and he cannot be permitted to take a plea that the cheque was not signed by him. Once the cheque is issued duly signed and properly endorsed, there is a presumption with the holder of the cheque and has liability against the issuer thereof.

6. This Court does not find any illegality, infirmity in the impugned orders passed by both the courts below. Rather, this Court is of the considered view that the same are inconsonance with legal and factual position.

7. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same stands dismissed.

January 18, 2016 **(JASPAL SINGH)**
sonika **JUDGE**