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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. No.2160/2013**

Date of Decision: February 23rd , 2016

JOYMON

..... PETITIONER

Through: Mr. Wills Mathews, Mr. Shashank
Menon, Advocates

versus

LUXOR WRITING INSTRUMENTS P.LTD. RESPONDENT

Through: Mr. Chand Zafar, Advocate

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

P.S.TEJI, J

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, praying for summoning the records and proceedings of the Complaint Case No.279/1/12 titled as M/s Luxor Writing Instruments Pvt. Ltd. v. Joymon; setting aside the order dated 15th February, 2013 passed by the learned Additional Session Judge(ASJ) -01, Patiala House Courts, New Delhi whereby the application of the petitioner under Section 243(2) of the Code of Criminal Procedure, for sending the cheques in question for expert opinion, was dismissed by learned Special Metropolitan Magistrate, Patiala House, New Delhi vide order dated 17th October, 2012 and, inter alia seeking issuance of

direction to the Trial Court to take on record the application for referring the dishonoured cheque for CFSL report/hand writing expert.

2. The facts giving rise to the present petition are within the narrow compass and to the extent necessary, narrated hereinafter.

3. The petitioner namely Mr.Joymon was the proprietor of M/s Gokul Agencies having his office at Thiruvananthapuram, Kerala while the respondent- M/s Luxor Writing Instruments Private Limited was having its registered office at New Delhi. The petitioner was having business transaction since the year 2000 with the respondent. As per the petitioner, on 8th April, 2000, he had issued a Demand Draft for the sum of Rs.50,000/- as first advance payment and tendered five blank cheques bearing signatures and the name of the respondent-company, to the respondent as security. It is contended that the cheques were issued without date and time having written on them.

4. Learned counsel for the petitioner has submitted that on 13th July, 2001, the dealings between the petitioner and respondent were discontinued for the reason that the same were not viable as the movement of the product was slow. A meeting in this regard was organized by the All Kerala Distributors Association. As per the petitioner, on 30th November, 2001, it was also agreed between the parties that the petitioner would hand over to the respondent all the existing stock on or before 1st December, 2001 against receipt and the

existing market outstanding as on date was to the tune of Rs.1,72,139/- which was to be collected jointly. As per the petitioner, he was maintaining a statement of accounts of the transactions which took place with the respondent and as per that statement, the closing balance on conclusion of business dealings was to the tune of Rs.90,202.33 for the period commencing from 8th April, 2000 to 15th December, 2001.

5. Learned counsel for the petitioner next contended that on 5th December, 2001, the petitioner returned the stock of goods by Cochin Freight Carriers Pvt. Ltd. and got an endorsement of the respondent on the statement of account. It is alleged by learned counsel for the petitioner that the respondent wrote an exorbitant figure of Rs.4,81,506.00 on one of the cheques issued on 8th April, 2000 and put a date of 16th October, 2002 on it and presented the same for encashment which was dishonoured for the reason of insufficient funds. After the dishonour of the said cheque, on 7th November, 2002 the respondent issued a legal notice to the petitioner under Section 138 of the Negotiable Instruments Act, claiming a sum of Rs.4,81,506/-. However, as per the petitioner, he was maintaining a statement of accounts of the transactions which took place with the respondent and as per this statement, the closing balance on conclusion of business dealings was to the tune of Rs.90,202.33 for the period commencing from 8th April, 2000 to 15th December, 2001. On 13th December, 2002, the petitioner replied to the

legal notice denying the liability of the value of the dishonoured cheque. The petitioner also requested the respondent to take back the damaged stock of goods amounting to Rs.1,75,000/- and adjust their dues of Rs.90,202.33 and requested thereby to repay the balance amount of Rs.85,000/- back to the petitioner.

6. During the complainant evidence, the witness on behalf of the complainant made a statement that the accused had written the date and amount in words and figures in the cheque and that the complainant received a current dated cheque instead of a post dated cheque. On 30th July, 2009, the petitioner had filed an application under Section 45/73 of the Evidence Act before the learned Magistrate which was dismissed holding that the time for moving the said application has not come.

7. During the course of defence evidence, on 14th October, 2011, the petitioner had filed an application for direction for referring the dishonoured cheque to a handwriting expert and for obtaining an opinion from CFSL. An application filed by the petitioner on 17th October, 2012 under Section 243(2) Cr.P.C. was dismissed by the learned Magistrate observing that even if it is proved that the cheques were undated, it would be of no help to the accused as the cheques were duly signed by the accused and as per Section 20 of Negotiable Instruments Act, the holder of a cheque has all authority to fill the details without appreciating subsequent amendments to the Negotiable Instruments Act. It is alleged

by learned counsel for the petitioner that the defence of the petitioner was not taken into consideration.

8. Thereafter, the petitioner filed a Criminal Revision Petition which was dismissed by the learned Sessions Judge observing that the learned Metropolitan Magistrate had rightly noted that as per Section 20 of Negotiable Instrument Act, the holder of the inchoate instrument/cheque is authorised to fill in the details and that no purpose would be served in sending the said cheque for examination by the expert agencies. It is alleged by learned counsel for the petitioner that the learned Sessions Judge did not take into consideration the fact that the amendment to the Negotiable Instruments Act incorporating Section 138 of Negotiable Instrument Act was a subsequent event and under Section 139 of the Negotiable Instrument Act, there is a presumption in favour of the holder, however, the accused has the right to rebut the same. It is further contended that Section 20 of the Negotiable Instrument Act is not an unconditional right to the holder to write any figure of his choice but only the figure not in excess of the amount intended by the person who issued the cheque to the holder.

9. In support of his contentions, learned counsel for the petitioner has relied on the pronouncements of the Supreme Court in ***T. Nagappa v. Y.R. Muralidhar (2008) 5 SCC 633***; ***G. Someshwar Rao v. Samineni Nageshwar Rao & Anr. (2009) 14 SCC 677*** & ***Kalyani Baskar (Mrs.) v.***

M.S. Sampoornam (Mrs.) (2007) 2 SCC 258. Learned counsel for the petitioner also relied on the judgment passed by Karnataka High Court in ***Crl.P. No.7723/2009 Ishwar s/o Mahadevappa Hadimani v. Suresh, s/o Rachappa Pattepur;*** judgment passed by Madras High Court in ***Cr.R.C.(MD) No.694/2013 M.S. Saravanan v. S.M. Jeyaraj*** and the judgment passed by Orissa High Court in ***Cr.M.C. No.2180/2009 Varun Passary & Anr. v. Maithan Ispat Limited.***

10. Learned counsel for the respondent, on the other hand, has submitted that the application filed by the petitioner under Section 45 of the Indian Evidence Act for sending the cheques to the Central Forensic Science Laboratory, has been rightly dismissed by the learned Metropolitan Magistrate and, thereafter, by learned Additional Session Judge. The respondent has averred that the five cheques given as security on 8th April, 2000, were not blank and in fact, the cheque in question was given against the amount due and payable as per the statement of account which was to the tune of Rs.4,81,506/- and not Rs.90,202.33 as manipulated by the petitioner. The respondent strongly denied that the rest of the contents were put by the respondent himself in the cheque. It is submitted that the respondent presented the cheque for encashment issued by the petitioner only for his liability. Learned counsel for the respondent denied the averment of the petitioner that the business dealings and transactions between the parties were discontinued for the

reason that the same were not viable as the movement of the product was slow. The respondent in the reply filed, has denied the averment of the petitioner having returned the goods to the respondent.

11. Learned counsel for the respondent has further contended that the second application of the petitioner under Section 243(2) of Cr.P.C. was not maintainable, as the petitioner himself had admitted that the cheque was given to the respondent with his signature against dues and in the discharge of his liability and as such, no purpose would be served by examining them through the handwriting expert.

12. I have heard learned counsel for the parties at length and perused the available records. I have also gone through the judgments cited by learned counsel for the petitioner.

13. Reverting back to the facts of the present case, insofar as Section 20 of the Negotiable Instrument Act, 1881, regarding inchoate stamped instrument is concerned, the same reads as under:-

“20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 15 [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case May, be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a

holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder...”

14. It is crystal clear from a bare reading of Section 20 of Negotiable Instruments Act, that if a blank cheque is signed and handed over, it insinuates that the person signing it has given an implied authority to the holder to fill it.

15. It is also pertinent to mention here that the first application filed by the petitioner under Sections 45 & 73 of the Indian Evidence Act, seeking direction to send the disputed cheque to a hand writing expert and CFSL for examination, was dismissed by the learned Metropolitan Magistrate holding that the time for moving the said application had not come.

16. It is admitted case of the petitioner that the cheques bear his signature. The only dispute is with regard to the writing of the cheque which the petitioner sought to examine through the expert. When it is admitted case of the petitioner that the cheques in question bear his signatures, as per Section 20 of the N.I. Act, it reflects that the person signing the cheque has given an implied authority to the holder to fill it.

17. So far as second application of the petitioner under Section 243(2) of the Code of Criminal Procedure, seeking direction for having CFSL report and opinion of handwriting expert to prove the difference in the handwriting in the cheque with reference to amount in figure and words with date on the one hand and signature and name of the bearer of the

cheque on the other, the same was rightly dismissed by the learned Metropolitan Magistrate vide order dated 17th October, 2012, on the ground that even if it is proved that the cheques were undated cheques, it would be of no help to the petitioner as the cheques were duly signed by the petitioner and as per Section 20 of Negotiable Instrument Act, the holder of a cheque has all the authority to fill the details. The learned Metropolitan Magistrate was also right in holding that it was admitted fact that the cheques were duly signed by the petitioner and that the name of the complainant was also written by the petitioner himself.

18. Even otherwise, the criminal complaint was filed in the year 2002 and about thirteen years have lapsed, but the trial has not seen the light of the day. The petitioner/accused is procrastinating the conclusion of complaint on one pretext or the other. Firstly, he moved the application under Sections 45 & 73 of the Indian Evidence Act and then moved the application under Section 243(2) of the Code of Criminal Procedure. After dismissal of the complaint, he preferred the revision petition and then approached this Court. The conduct of the petitioner shows delaying tactics for which the complainant is suffering for long.

19. For all the foregoing reasons, I do not find any infirmity or illegality in the order dated 15th February, 2013, passed by the learned Additional Sessions Judge, dismissing the revision petition preferred by the petitioner.

20. Consequently, the present petition is dismissed.

(P.S.TEJI)
JUDGE

FEBRUARY 23rd, 2016
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