

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 931 of 2017

Pawan Kumar Gupta, S/o. Shri Anand Swaroop Gupta, Aged about 60 years, Proprietor – M/s. Gupta Bhandar, R/o. 3rd Street, P.P. Compound, P.S. Hindapari, District Ranchi (Bihar).

---- Applicant

Versus

Vishnu Dayal Gupta, S/o. Shri Anand Swaroop Gupta, Aged about 57 (37) years, R/o. Anand Bazar, Main Road, P.S. Lower Bazar, District- Ranchi (Bihar)

---- Respondent

For Applicant : Mr. Prakash Tiwari, Advocate

For Respondent : Mr. Abhishek Saraf, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02.11.2017

Heard

1. The present petition is against the order dated 10.07.2017 passed in Criminal Revision No.130/2015 by the Fourth Additional Session Judge, Raigarh. By such order, the learned Additional Session Judge has directed for examining the cheque by an expert. Earlier to it, an application to examine the hand-writing expert under Section 45 of the Indian Evidence Act was dismissed by the Judicial Magistrate, which was subject of challenge wherein the impugned order dated 10.07.2017 was passed.
2. Learned counsel for the petitioner submits that the complaint case is pending since 1999 before the trial Court and on some pretext or other, the case was adjourned. Subsequently, despite the fact that the accused/respondent has admitted his signature over the cheques, the order for getting the same examined by an expert cannot be sustained as under the Negotiable Instrument Act, it nowhere restricts the filling of the name or any date therein except

tampering or fraud. It is contended that having admitted the signature on the cheque, the presumption in favour of holder will be followed. In a result, the order dated 10.07.2017 cannot be sustained and the same may be set aside by restoring the order of the Judicial Magistrate dated 16.12.2015.

3. Learned counsel for the respondent vehemently opposes the same and submits that there is no reason as to why the petitioner should avoid the cheque examined by an expert within a short period of time. It is submitted that no illegality can be attached in the order passed and as such the same is well merited and justified.
4. Perused the documents filed alongwith the petition. This fact cannot be ignored that the proceedings before the Judicial Magistrate over a complaint under Section 138 of the Negotiable Instrument Act is pending since 1999. The application which is filed on behalf of the accused under Section 45 of the Indian Evidence Act would show that it was alleged that certain blank signed cheques were kept in possession of the petitioner wherein the name, amount and dates have been inserted, thereby, fraud was played. It would show that the signature in the cheques were admitted but it was alleged the amount & name were not written by the drawer but by somebody else has done and the complainant tried to encash the same. Once the signature in the cheques are admitted inserting the name, amount and date therein cannot fall within the definition of material alteration as per Section 87 of the Negotiable Instrument Act. It can be stated that it is only addition of amount, name and date. This proposition cannot be laid down that the drawer of the cheque himself has to fulfill the

amount, name and date in the cheque itself. There can be cases that the beneficiary for some reason or other may ask to fulfill the amount and name in the cheque to others. Unless the fulfilling of cheque is attached by any tampering the same cannot be stated that fraud was committed. Even if it is held that the payee name and amount has not been in the hand-writing of the same person i.e. drawer, it cannot be rendered the cheque as invalid. What is material is the signature and Section 139 of Negotiable Instrument Act draws the presumption in favour of the holder which mandates that it shall be presumed that the holder of the cheque has received the same in discharge of the debt or liability unless the contrary is proved. It is always open for the accused to prove before the Court that no liability exists so as to come out the rigor of Section 138 of the Negotiable Instrument Act. Furthermore, the complaint under Section 138 of the Negotiable Instrument Act are to be tried as summary case, therefore, unless the peculiar circumstances are pointed out, the scope cannot be enlarged to the extent to call for the expert under Section 145 of the Indian Evidence Act.

5. In view of foregoing discussion, I am of the opinion that the order dated 10.07.2017 passed by the Fourth Additional Session Judge cannot be sustained. Accordingly, the same is set aside. The order of the J.M.F.C. dated 16.12.2015 is restored. The J.M.F.C. is further directed to dispose of the case within a period of three months from the date of receipt of a copy of this order.
6. In the result, the petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge