

114.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-13712-2015

Date of decision:01.09.2017.

OM DUTT SHARMA

... Petitioner

versus

SHRI RAM TRANSPORT FIN. CO. LTD.

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Jangvir Singh Hooda, Advocate, for the petitioner.

HARI PAL VERMA, J.

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of impugned order dated 08.12.2014 (Annexure P/2) passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby the application filed by the petitioner for appointment of Fingerprint and Handwriting Expert was dismissed. Challenge has also been laid to the order dated 15.04.2015 (Annexure P/4) passed by learned Sessions Judge, Gurgaon, whereby the revision petition filed against the order dated 08.12.2014, was dismissed.

Briefly stated, the respondent-complainant filed a complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter called as 'Act') on the ground that the petitioner had issued a cheque bearing No.138151 dated 01.06.2013 drawn on Canara Bank, Manesar, Gurgaon, for an amount of ₹15,93,561/- in favour of respondent. However, on presentation of said cheque, the same was returned vide memo dated 05.06.2013 with the remarks "Funds

Insufficient".

After considering the evidence led by the respondent-complainant, the trial Court issued process of summoning the petitioner-accused. The accused appeared before the trial Court and was admitted on bail. Notice of accusation was served upon the accused on 30.04.2014, to which, he did not plead guilty and claimed trial. However on 10.09.2014 when the case was fixed for defence evidence and arguments, the petitioner moved an application for appointment of Handwriting and Fingerprint Expert. The said application was dismissed by the learned Magistrate vide order dated 08.12.2014.

Aggrieved against the order dated 08.12.2014 passed by the trial Court, the petitioner preferred a revision petition before the learned Sessions Judge, which was also dismissed vide order dated 15.04.2015.

It is in the aforesaid circumstances, the petitioner has approached this Court impugning the aforesaid orders.

Learned counsel for the petitioner has argued that the courts below have adopted a very erroneous approach and, therefore, have committed material irregularity in exercise of their jurisdiction. Petitioner neither issued the cheque in question on 01.06.2013 as alleged in the complaint nor the same was issued to discharge any legal liability. The cheque was handed over by the petitioner on the asking of the respondent-complainant as security in the year 2010. The cheque was not filled-up by the petitioner, rather it was given in blank

after putting his signature. The respondent-complainant had misused the cheque in question which was otherwise lying in their custody since the year 2010. On an earlier occasion, the petitioner had issued a cheque bearing No.138155 dated 29.01.2011 in favour of respondent-complainant and the same was duly encashed. The petitioner contended that as to how a cheque which is earlier in serial number i.e. 138151 could be presented on 01.06.2013 i.e. after a delay of three years. The respondent has fabricated and manipulated the cheque in question. Therefore, the petitioner filed an application for appointment of an handwriting expert, but the same was dismissed by the learned Magistrate vide order dated 08.12.2014. He filed a revision petition against the said order, but it was also dismissed by learned Sessions Judge vide order dated 15.04.2015.

I have heard learned counsel for the petitioner.

The Magistrate summoned the accused vide order dated 13.09.2013 to face trial under Section 138 of the Act. The petitioner appeared before the trial Court and was admitted on bail. Thereafter, notice of accusation was served upon the petitioner on 30.04.2014. It is only on 10.09.2014 when the case was fixed for defence evidence and arguments, the petitioner moved an application for appointment of handwriting and fingerprint expert. The said application was dismissed on 08.12.2014 by the Magistrate. The pleaded case of the petitioner is that the cheque was issued for security of the liability incurred, but this contention of the petitioner is not plausible for the purpose of

appointment of handwriting and fingerprint expert for checking/ comparison of handwriting over the body of the cheque in question. In **Purushottam Versus Manohar K. Deshmukh and another-2007(2) R.C.R. (Criminal) 353**, it has been held that if a person hands over a duly signed blank cheque, thereby he gives an authority to the holder to put a date of his choice and to present the same for encashment. The cheque does not loose its sanctity merely due to the fact that the same has been filled in by some other person. Therefore, the holder of the cheque can always present the cheque and it is not always necessary that the cheque is required to be presented as per serial number. The petitioner has taken a plea that the cheque No.138151 was encashed by the respondent-complainant after three years i.e. 01.06.2013, whereas cheque No.138155 was encashed on 29.01.2011. Therefore, even if the cheque No.138151 was presented on 01.06.2013, it cannot be accepted that the same cannot be presented for encashment by the respondent-complainant.

In view of above, this Court does not find any illegality in the impugned order passed by the courts below.

Accordingly, present petition is dismissed.

(HARI PAL VERMA)
JUDGE

01.09.2017
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.