

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

Crl. Revision No.2049 of 2017 (O&M)

Date of Decision: June 01, 2017

Yashdeep Singh

.....PETITIONER(s).

VERSUS

Anil Jawa

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Anil Ghanghas, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

This is revision against the order dated 10.03.2017 whereby application of the petitioner for sending of cheque, which is basis of complaint and its deposit slip to Forensic Science Laboratory, was dismissed.

2. Respondent filed a complaint under Section 138 of Negotiable Instruments Act, 1881 against the petitioner with the allegation that the petitioner had issued a cheque of ₹10,70,000/- towards repayment of his loan which on representation to the bank was dishonoured.

3. Complainant appeared in support of his case as CW1. In cross-examination, a defence was set up by the petitioner that complainant had fraudulently taken blank cheque of petitioner and misused the same. After producing defence evidence, the petitioner moved application for sending

the documents to forensic examination with the plea that a fraud has been committed by the complainant by making over-writing over the amount of figure of ₹30,000/- or ₹3,00,000/- written by the petitioner in the cheque to convert it into ₹10,70,000/-. Learned Magistrate declined the application with the observation that petitioner has not denied his signatures on the cheque Ex.C3. Bare perusal of the cheque do not show any cutting or alteration.

4. Learned counsel for the petitioner has argued that the onus is on the petitioner to prove his defence by leading evidence that the cheque was in fact having cutting/over-writing and learned trial Court has committed grave error while declining the opportunity to the petitioner to prove this fact.

5. On perusal of the paper-book and the orders passed by learned trial Court and going through the statement of complainant, I find no reason to agree with submissions of learned counsel for the petitioner, though not for the reasons recorded by learned trial Court.

6. Learned counsel for the petitioner was specifically inquired as to whether the complainant, who appeared as CW1, was confronted with this fact that he had changed the figure of ₹30,000/- or ₹3,00,000/- written by the petitioner in the cheque to ₹10,70,000/-. While answering this query, learned counsel for the petitioner has given a very guarded reply stating that he himself is the defence counsel of the petitioner but has avoided to give such suggestion to the complainant, rather kept this fact a secret to be divulge at later stage in defence.

7. Submissions of learned counsel for petitioner are bereft of any logic, substance or legal force. When the complainant appeared as CW1, he

was not confronted with the fact that petitioner had issued him cheque of ₹30,000/- or ₹3,00,000/- which he changed to ₹10,70,000/-. To the contrary, suggestion given to the complainant is that he had misused the blank cheque of petitioner in this case. Meaning thereby, it is nowhere case of petitioner that he had issued any cheque to the complainant worth ₹30,000/- or ₹3,00,000/- or that amount of said cheque was changed to ₹10,70,000/- and that cheque was used for filing the instant complaint.

8. Another query was put to learned counsel for the petitioner during the course of arguments as to how the complainant will have a chance to rebut the evidence sought to be produced by the petitioner regarding alleged interpolation or tampering of the cheque and to this query, learned counsel for the petitioner submits that in the criminal law, there is no such provision of rebuttal, as such, complainant shall have no right or authority to assail the evidence produced by the petitioner, meaning thereby, he wants to take the complainant by surprise.

9. Petitioner is coming up with defence that his blank cheque has been used by complainant. In case, he had set up a plea that some tampering or interpolation has been made in the cheque, complainant would have produced evidence to meet with this plea. There is nothing on record to show that even in reply to the notice served by the complainant before filing of the complaint, any such plea was raised by the petitioner.

10. A fair and safe conclusion that can be drawn in such circumstances is that the plea being raised by the petitioner is just and after-thought and in the facts and circumstances as discussed above, the trial Court has rightly dismissed the application filed by the petitioner.

11. Consequently, this revision petition has no merits.

Dismissed.

June 01, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No