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+ **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Crl. MC. 862/2017

RAMBIR SHARMAPetitioner
Through: Mr. Raj Kumar Chandiwal and
Ms.Natasha Rani Khudania, Advocates.

Versus

M/S HBN HOUSING FINANCE LTD.Respondent
Through: Mr. Vipul Srivastava and Mr. Aditya
Sharda, Advocates.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
11.10.2017

1. The present petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as '**Cr.P.C.**') read with Article 227 of the Constitution of India the petitioner assailing the order dated 13.02.2017 (hereinafter referred to as the '**Impugned Order**') passed by Additional Sessions Judge-05, District West, Tis Hazari Courts, Delhi in Criminal Revision No. 09/2017 arising out of order dated 08.10.2016 passed by Metropolitan Magistrate, Tis Hazari Courts, Delhi in CC No. 6929/16, Police Station – Vikas Puri, New Delhi.
2. The contextual matrix of the case as set out in the petition is that, the petitioner had obtained a housing loan of Rs.17,00,000/- (Rupees Seventeen Lacs Only) from the respondent subject to terms and conditions as contained in the Home Loan Agreement executed between them, wherein the petitioner had agreed to

re-pay the loan amount in monthly instalments of Rs.20,403/- (Rupees Twenty Thousand Four Hundred Three Only); that at the time of the loan agreement, respondent took 3 blank cheque books without signatures of the petitioner; that the petitioner failed to comply with his contractual obligations and failed to pay monthly instalments; that the petitioner allegedly issued a cheque bearing No. 791387 dated 05.07.2013 for Rs.18,72,541 (Eighteen Lacs Seventy Two Thousand Five Hundred Forty One Only) towards full and final settlement of the debt; that the said cheque was returned unpaid due to "Funds Insufficient"; that the respondent, through its counsel sent a legal notice to the petitioner calling upon him to pay the cheque amount and thereafter filed a complaint bearing no. 6929/16 before the concerned court; that during the course of examination of witnesses, the petitioner moved an application under Section 243(2) Cr.P.C. read with Section 45 of The Evidence Act, for seeking an opinion of a handwriting expert upon the cheque which was dismissed by the Trial Court vide its order dated 08.10.2016; that the petitioner challenged the said order in the Criminal Revision Petition No. 09/2017, which was dismissed vide order dated 13.02.2017 whereafter, the petitioner preferred the present petition.

3. Learned counsel for the petitioner contends that the impugned orders are bad in law and contrary to the material on record; that the Trial Court failed to appreciate that the accused/petitioner must be given an opportunity to adduce evidence in his defence when there is a presumption of misuse of cheque as held in

T. Nagappa Vs. Y. R. Muralidhar reported in (2008) 2 JC [NI] 211; that mere admission of the signatures on the cheques does not give the presumption for legally enforceable debt and reliance has been placed on a judgment passed by the Hon'ble High Court of Kerala in *Bajju G. Nath Vs. Girija Krishnakumar & Anr. in Crl.LP 290/2011*; that the cheque was misused by the respondent which is evident from the account statement of the respondent which reflects that the subsequent numbers of the various cheques series were presented before the date of the cheque in question and hence it becomes necessary to get the cheque in question examined through a handwriting expert; that the Trial Court erred in holding that Section 20 of NI Act validates the blank signed cheques whereas Section 20 only speaks for stamped paper/instrument i.e. pronote and it is not applicable to the cheques.

4. Per contra, learned counsel for the respondent/complainant supporting the impugned orders submits that there is no infirmity in the impugned order and relied on the judgment of *Ravi Chopra vs. State & Anr.* reported in 2008 (102) DRJ 147.
5. I have given my thoughtful consideration to the submissions made by the learned counsels for the parties and perused the material available on record.
6. For the purpose of deliberation, the **Section 20 of The Negotiable Instruments Act, 1881** is reproduced hereunder:

“Section 20: Inchoate stamped instruments.—
Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1[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 the 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.”

7. In the case of **Ramesh Goyal vs. State and Ors. Crl. A. 128/2017**, Decided on **31.05.2017**, this Court has held that:

“Even if the theory of blank cheque were to be accepted for the sake of consideration, the burden is on the accused to justify it by cogent reasons. There is no law that a person drawing the cheque must necessarily fill it up in his own hand writing. Once the signatures on the cheque are admitted, the liability arising therefrom cannot be evaded on the specious plea that the contents were not filled up by the drawer of the cheque. When a blank cheque is signed and handed over, it only implies that the person signing it, and handing it over, has given implied authority to the holder of the cheque to fill up the blank portions, it being a matter of legitimate presumption that he would understand the consequences of doing so.”

8. In the case of **Vijender Singh Vs. Eicher Motora Limited and Anr. Crl.M.C.No. 1454/2011**, decided on 05.05.2011, this Court has held as under:

“Learned Counsel for the petitioner has next contended that the Blank cheques have been given which have been filled up by Respondent No.1 and

attracts no legal consequences having been tempered with. This argument has to be rejected outrightly as there is no law that a person drawing the cheque has to necessarily fill it up in his own handwriting. Petitioner has not denied his signatures on the cheques. Once he has admitted his signatures on the cheque he cannot escape his liability on the ground that the same cheque has not been filled in by him. When a blank cheque is signed and handed over it means that the persons signing it has given implied authority to the holder of the cheque to fill up the blank which he has left. A person issuing a blank cheque is supposed to understand the consequences of doing so. He cannot escape his liability only on the ground that the blank cheques have been issues."

9. In **Ravi Chopra Vs. State & Anr.** reported in **2008(102) DRJ 147**, this Court has observed that:

18. Section 20 NI Act talks of "inchoate stamped instruments" and states that if a person signs and delivers a paper stamped in accordance with the law and "either wholly blank or have written thereon an incomplete negotiable instrument" such person 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." Section 49 permits the holder of a negotiable instrument endorsed in blank to fill up the said instrument "by writing upon the endorsement, a direction to pay any other person as endorsee and to complete the endorsement into a blank cheque, it makes it clear that by doing that the holder does not thereby incurred the responsibility of an endorser." Likewise Section 86 states that where the holder acquiesces in a qualified acceptance, or one

limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent has not been obtained to such acceptance would stand discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. Section 125 NI Act permits the holder of an uncrossed cheque to cross it and that would not render the cheque invalid for the purposes of presentation for payment. These provisions indicate that under the scheme of the NI Act an incomplete cheque which is subsequently filled up as to the name, date and amount is not rendered void only because it was so done after the cheque was signed and delivered to the holder in due course.

19. The above provisions have to be read together with Section 118 NI Act which sets out various presumptions as to negotiable instruments. The presumption is of consideration, as to date, as to time of acceptance, as to transfer, as to endorsement, as to stamp. The only exception to this is provided in proviso to Section 118 which reads as under:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

20. A collective reading of the above provisions shows that even under the scheme of the NI Act it is possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent

either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the drawee. There is no provision in the NI Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constituting a 'material alteration' for the purposes of Section 87 NI Act. What however is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the maker, that would be a material alteration. Therefore as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled up is different from the ink of the signature is not a material alteration for the purposes of Section 87 NI Act.

25. In other words, merely because there is a CFSL report that shows that the handwriting, the ink and the time of filling the material particulars is different from that of the signatures, that by itself will not go to prove that the accused has discharged his liability towards the complainant even before the date of the presentation of the cheques. For these reasons, there is no merit in the prayer of the petitioner for sending the cheques to the CFSL for the opinion of the handwriting expert.

10. The aforesaid judgments squarely cover the issue raised in the present case. In my considered opinion there is no requirement for obtaining the opinion of the handwriting expert as the petitioner has clearly admitted having signed on the blank cheque and given to the respondent. Section 20 of the NI Act permits the drawer to fill the amount as well as the date in a blank signed cheque and

thus complete the inchoate instrument delivered to him. The argument raised by the learned counsel for the petitioner that presentation of cheques of subsequent number series prior to the cheque in question is of no consequence nor the opinion of a handwriting expert is required to be called for in view of the above observations.

11. Keeping in view the above settled law and in totality of the facts and circumstances of the case, I find no reason to interfere with the orders passed of the Trial Court.

Crl.M.A. No. 3668/17 and 13642/17

12. In view of the above order, the applications are rendered infructuous and the same are disposed of.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 11, 2017
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