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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL. M.C. 2029/2016 and Crl. M. A. Nos. 8591/2016 (Stay) and 14788/2017

MOHAN LAL MANDA …..Petitioner
Through: Mr. Ashok Kumar, Advocate.

Versus

GANGA RAM SAKH ….Respondent
Through: Mr. Vishesh Verma, Advocate.

+ CRL. M.C. 2030/2016 and Crl. M. A. Nos. 8593/2016 (Stay) and 14790/2017

MOHAN LAL MANDA …..Petitioner
Through: Mr. Ashok Kumar, Advocate.

Versus

GANGA RAM SAKH ….Respondent
Through: Mr. Vishesh Verma, Advocate.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R
13.10.2017

1. These petitions have been filed under Section 482 Cr.PC assailing the order dated 24.02.2015 passed by the Additional Chief Metropolitan Magistrate, Karkardooma, Delhi whereby an application under Section 45 of the Evidence Act dated 04.01.2013 and an application dated under Section 311 Cr.PC dated 22.11.2014 brought by the petitioners were dismissed and also

order dated 12.10.2015 passed by Special Judge (NDPS) (N/E), Delhi in Revision Petition No. 18/2015.

2. Brief facts necessary for disposal of the present petitions is that the respondent herein had filed a complaint under Section 138 of Negotiable Instrument Act on which summons were issued to the petitioner herein; that notices were framed against the petitioner, who denied the allegations and stated that the respondent/complainant had stolen the cheques and misused the same; that the matter was fixed for defence evidence and the petitioner had summoned the bank witnesses to prove that the bank account had already been closed and no transaction had been made since long; that thereafter the petitioner had summoned the bank witness of respondent's bank to examine the bank deposit slip regarding the deposit of the cheque in question but the original deposit slip were not on judicial record; that an application under Section 45 of the Evidence Act for calling a handwriting and finger print expert to give his expert opinion, was made; that another application under Section 311 Cr.PC for recalling the bank witness of the respondent to bring the original record was moved; that vide impunged order dated 24.02.2015, both aforesaid applications were dismissed; that the petitioner filed a Revision Petition against the said order which was dismissed vide impugned order dated 12.10.2015.

3. The main contention of learned counsel for the petitioner is that the cheque was never issued by the petitioner to the respondent and the same was stolen and misused by the respondent. Learned counsel

contended that opinion of the handwriting and finger print expert to prove the handwriting and signature on the cheque in question was necessarily required and the Trial Court having rejected his prayer resulted in miscarriage of justice.

4. On the other hand, learned counsel for the respondent supporting the impugned orders argued that there is no merit in the applications under Section 45 of Evidence Act and under Section 311 Cr.PC and the impugned orders dismissing the said applications do not suffer from any illegality and hence, no interference is required by this Court.

5. I heard the learned counsel for parties and perused the material available on record.

6. Respondent/complainant filed a case under Section 138 of Negotiable Instrument Act for discharge of a cheque dated 26.10.2004 for Rs.3,00,000/-. Notice of accusation was framed against the petitioner who denied his liability of cheque in question and submitted that his signed cheque was stolen and misused by the respondent. The petitioner pleaded not guilty and claimed trial. Bank officials being DW1 and DW2 were examined to prove the fact that the account was maintained by the petitioner in State Bank of India, Chawri Bazar, Delhi and the cheque deposit slip with Punjab National Bank, Vivek Vihar, Delhi. The petitioner thereafter moved an application under Section 45 of the Evidence Act for summoning the handwriting expert to give his opinion about the signature of the complainant on the cheque in question and thereafter moved another application under Section 311 Cr.PC

for summoning the original cheque deposit slip dated 16.04.2005 in respect of the cheque in question from Punjab National Bank, Vivek Vihar, Delhi for comparison of the handwriting of the cheque deposit slip with the handwriting and signatures on the cheque in question.

7. 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."*

8. 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."

9. 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."*

10. 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 Actwhich 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.

11. As per record, the substance of accusation was framed on 29.04.2006. The petitioner did not dispute his signatures on the cheque in question. The plea taken by the petitioner that the cheque had been stolen stands belied from the fact that he failed to get a police report lodged about the stolen cheque nor informed the bank to stop payment of the same. Moreover, strangely enough, the petitioner moved the applications under Section 45 of the Evidence Act and Section 311 Cr.PC after 7 years of framing of substance of accusation.

12. Keeping in view the facts and circumstances of the present case, I find that the impugned orders do not call for any interference by this Court and the petitions being devoid of any merits are dismissed along with pending application.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 13, 2017
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