

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

Civil Revision No.175 of 2018.
Decided on:-January 15, 2018.

Arun Sharma.

.....Petitioner.

Versus

Manoj Kumar Garg.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Arun Sharma, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present civil revision petition under Article 227 of the Constitution of India impugning the order dated 02.01.2018 passed by learned Additional Civil Judge (Senior Division), Kaithal, whereby the trial Court has sent the voice sample of the petitioner to the Forensic Science Laboratory (FSL), Madhuban for its comparison with the audio CD placed on record.

Briefly stated, the respondent-plaintiff had filed a suit for recovery for an amount of Rs.5,37,935/- against the petitioner-defendant and during pendency of the civil suit, the respondent-plaintiff has filed a copy of CD as Ex.PC, which contains the voice of the petitioner-defendant.

Learned counsel for the petitioner has argued that the respondent-plaintiff has also filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act), but the said complaint

was dismissed by the trial Court as the respondent-plaintiff is a habitual complainant, who is misleading the Court. He wants to prolong the false and frivolous suit for recovery filed against the petitioner.

He has further argued that once the complaint under Section 138 of the Act has been dismissed by learned Magistrate, the present suit for recovery is not maintainable and proceedings in the civil suit are barred under Article 20(3) of the Constitution of India.

I have heard learned counsel for the petitioner.

The respondent-plaintiff has placed on record the CD Ex.PC which contains the voice of the petitioner-defendant. Interestingly, in his cross-examination, the defendant has stated that in case the plaintiff bears the expenses of expert examination of the voice contained in the CD, he has no objection to the same. Accordingly, vide order dated 04.07.2017, learned civil Court has accepted request of the plaintiff for comparison of the voice of petitioner-defendant. In order to narrow down the controversy and to arrive at the truth, the voice sample of the petitioner-defendant was taken in a micro SD Card (4 GB) of make 'NC Ultra' as contained in the CD Ex.PC and was sent to FSL, Madhuban for comparison vide impugned order dated 02.01.2018 passed by the civil Court.

Merely because the complaint under Section 138 of the Act filed by the respondent-plaintiff against the petitioner-defendant has been dismissed by the criminal Court is no ground to deny the plaintiff to file a civil suit as the findings of criminal Court are not strictly binding upon the civil Court.

In the absence of any other material on record, this Court finds that there is no illegality or irregularity in the impugned order dated 02.01.2018 passed by the civil Court.

Accordingly, the impugned order dated 02.01.2018 passed by learned Additional Civil Judge (Senior Division), Kaithal is affirmed and the present civil revision petition, being devoid of any merit, is dismissed.

The observations made above shall not be taken as an expression on the merits of civil suit pending between the parties.

January 15, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No