

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-M-30888 2017

Date of decision: August 8, 2018

Ashish Goyal

... Petitioner

versus

Birjesh

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Randhir Singh Shehrawat, Advocate
for the respondent.

HARI PAL VERMA, J. (Oral)

The petitioner has filed the present petition filed under Section 482 Cr.P.C for quashing the order dated 5.8.2017 passed by the learned Additional Sessions Judge as well as order dated 8.6.2017 passed by Judicial Magistrate, Ist Class, Hisar whereby the application filed by the petitioner-complainant for issuance of a direction to the respondent to give his voice sample before the CFSL, Chandigarh so as to compare it with the voice recorded on the mobile phone of the petitioner was dismissed.

It is stated that the petitioner-complainant has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') with an averment that the complainant has dumper trucks and deals in supply and carriage of the building material.

Accordingly, the respondent/accused who is a contractor of roads of

June, 2014 to September, 2014 for the purpose of construction of the road on that stretch. The respondent-accused availed carriage service for transporting building material through the vehicle of the complainant and had also purchased building material i.e. Red stone from the complainant during July, 2014 to September, 2014. Since there was no formal document executed between the parties regarding the agreement or order placed by the accused for supply of the building material, the petitioner and respondent-accused used to converse on their mobile phones. The petitioner's mobile No. is 8295958848 whereas the mobile number of the accused is 9896418111. For providing dumper service and the building material supplied by the complainant to the accused a considerable amount had become due. Therefore in order to discharge the outstanding liability for the materials supplied by the complainant, the respondent had issued two cheques i.e. Cheque No. 847087 dated 25.2.2016 for an amount of Rs. 2 lacs and cheque No. 015142 dated 25.2.2016 for an amount of Rs. 4 lacs. Both the cheques were drawn on Oriental Bank of Commerce, Police Lines, Area Hisar. The cheque as given by the accused was presented before the Bank but the same was dishonoured on account of insufficiency of funds which led to filing of the complaint under Section 138 of the Act.

Since there was no formal agreement executed between the parties, the petitioner had moved an application for issuance of a direction by the trial court to the accused to give a sample of his voice before the CFSL, Chandigarh, so as to compare the conversation recorded by the complainant on his mobile phone with the voice of respondent-accused. However, the application was dismissed by the trial court with the observations that it cannot be relied upon that these CDs are a talk between

the complainant and accused. Mere examination by the Director FSL and the report submitted by him does not mean that this conversation is related to the cheques with respect to which complainant has filed the complaint. The said order was challenged by way of revision petition before the learned Additional Sessions Judge, Hisar. However vide order dated 5.8.2017, same was dismissed.

Learned counsel for the petitioner has argued that in order to succeed in the complaint, it is necessary for the petitioner to examine the conversation between the parties i.e. voice of the petitioner viz-a-viz the respondent-accused. He has referred to the conversation between the parties (Annexure P-7).

It is further argued that the petitioner had extended his carriage service and had supplied building material to the respondent-accused and it is in response thereto the respondent had issued these cheques. Since there is no formal document between the parties regarding placing of order by the accused, in the absence of such a document, the conversation which had taken place between the parties is necessary to be proved. The same can be proved only by testing the voice of the accused before the CFSL, Chandigarh. He has prayed for voice sample of the accused so as to compare with the recorded voice of the accused from the CFSL.

On the other hand, learned counsel appearing on behalf of the respondent has argued that the alleged CD of his recorded voice by the complainant is seriously disputed. Moreover, Bharti Ltd., the telecommunication service provider of the complainant is not maintaining any record qua the conversations between the accused and complainant.

The available recording is between July, 2014 to September, 2014 whereas

the alleged cheques have been issued on 25.2.2016. The telecommunication department is maintaining such old record. Therefore the CD is seriously doubted.

I have heard learned counsel for the parties.

The petitioner has filed a complaint under Section 138 of the Act which is based on the issuance of a cheque by the accused. Though issuance of cheque has seriously been doubted. Therefore, it is for the petitioner to prove whether the respondent had executed the cheque in his favour. This fact would be ascertained during the trial. So far as the voice sample of the respondent is concerned, in view of the specific statements so made in the complaint that no formal document was reduced into writing, and it is only on the basis of conversation held on mobile the facilities of transportation as building material was extended to the accused, therefore the recording of the mobile phone is the very basis to succeed in the complaint. Still the onus is on the complainant to prove the dealing. This Court finds that the order passed by the trial court whereby the petitioner has been declined permission to get the voice of the respondent recorded if allowed to sustain will prejudice his claim as projected in the complaint.

Accordingly the present petition is allowed. The order passed by the courts below is set aside.

The trial court shall take the sample voice of the respondent and shall forward it to the CFSL, Madhuban/Karnal for comparison of voice with the voice recorded in the mobile phone of the petitioner-complainant. The complainant shall bear the whole expenses so incurred during this exercise.

It is made clear that the observations made herein above

shall not be construed as an expression on the merits of the case.

Accordingly, the Criminal Miscellaneous Petition stands
disposed of.

(HARI PAL VERMA)
JUDGE

August 8, 2018
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No