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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 885/2018 & Crl. M.A. Nos. 3295-3296/2018

BIPIN SHAH

..... Petitioner

Through Mr. Shakeel S. Wani and Mr.
Himanshu Garg, Advs.

Versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondents

Through Mr. G.M. Farooqui, APP for the State
None for respondent no. 2

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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21.02.2018

By this petition under Sections 482 Cr.P.C., petitioner has assailed the order dated 6th December, 2017 passed by the learned Additional Sessions Judge-03, South District, Saket Courts, New Delhi, whereby Revision Petition filed by the petitioner against the order dated 27th January, 2017 of the learned Metropolitan Magistrate, thereby dismissing the application under Section 311 Cr.P.C. read with Section 45 of the Indian Evidence Act to call for expert opinion for determination of age of particulars on the cheque in question, has been dismissed.

Respondent no. 2 filed a complaint under Section 138 of the

Negotiable Instruments Act, 1881 (“the Act”, for short) against the petitioner. After recording pre-summoning evidence, petitioner was summoned as an accused for the offence under Section 138 of the Act. Notice under Section 251 Cr.P.C. was framed against the petitioner for having committed an offence under Section 138 of the NI Act to which petitioner pleaded not guilty.

Respondent no. 2 led evidence. Thereafter, statement under Section 313 Cr.P.C. of petitioner was recorded on 19th May, 2014. Petitioner was afforded opportunity to lead defence evidence. Petitioner moved application for summoning the witnesses, which was allowed. Petitioner has examined three witnesses in the defence.

Petitioner filed separate application under Section 311 Cr.P.C. for obtaining expert opinion for verification of age of ink by which charges were filed in. As per the petitioner he had issued the cheques in the year 2005, on representation of respondent no. 2 that he was facing financial problems. He had to pay money to 5 to 6 creditors amounting to ₹5-6 lacs and he needed cheques to satisfy the credentials. Accordingly, five cheques were issued. However, respondent no.2 did not return the cheques and has misused the same in the year 2011 on the pretext that petitioner had issued

five cheques bearing nos. 086832 to 086836, all dated 11th February, 2005, to discharge the loan taken by him.

Trial court as well as Revisional Court have noted that signatures on the cheques in question were not in dispute. Accordingly, it did not matter as to who had filled the cheques. Reliance was placed on Ravi Chopra vs. State & Anr. 2008 (2) CC Cases (HC) 341 wherein it has been held as under:-

“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.”

A learned Single Judge, vide order dated 22nd February, 2008 passed in Crl. M.C. No. 7821/2006 titled Jaipal Singh Rana vs. Swaraj Pal Singh has held that in a case involving the offence under Section 138 NI Act, the Magistrate would be justified in declining to refer the cheques for opinion of the handwriting expert where the signatures of the drawer on the cheque were not disputed by the drawer. Vide order dated 31.5.2017 passed in Crl.A.No.128/2017 titled Ramesh Goyal vs. State, the learned Single Judge has held that there is no law that a person drawing the cheque must necessarily fill it up in his own handwriting. Once the signatures on the cheque are admitted, the liability arising therefrom cannot be evaded on the specific plea that contents were not filled up by the drawer. When a blank cheque is signed and handed over, it only implies that 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. Reliance is also place on

Mohan Lal Manda vs. Ganga Ram Sakh MANU/DE/3224/2017, S. Gopal vs. D. Balachandran MANU/TN/0119/2008, Magnum Aviation (Pvt.) Ltd. vs. State and Ors. MANU/DE/2127/2010. The situation is no different as far as the present case is concerned. In the present case also signatures on the cheques have not been disputed.

Learned counsel for the petitioner has relied on T.Nagappa vs. Y.R. Muralidhar (2008) 5 Supreme Court Cases 633 and Kalyani Baskar (Mrs.) vs. M.S. Sampooram (Mrs.) (2007) 2 Supreme Court Cases 258. I have perused the judgments, which, in my view, are in the context of different facts and are no help to the petitioner. It is noted that Kalyani Baskar (supra) has been considered by the learned Single Judge of this Court in Ravi Chopra (supra).

For the foregoing reasons, I do not find any grave perversity in the impugned order. Accordingly, petition is dismissed with costs of ₹25,000/- to be made over to the respondent no. 2 before the trial court. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

FEBRUARY 21, 2018
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