

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 2254 of 2019**

Smt. Sunita Biswal, Wife of Malay Kumar Biswal, Aged about 48 years, R/o Flat No. 301, Anand Puram Phase I, Near Mile Stone School Kohka, Bhilai, Post Supela, Police Station Supela, Tahsil and District Durg, Chhattisgarh.

---- **Petitioner**

Versus

H.K. Parganiha, Son of late T.R. Parganiha, Aged about 58 years, R/o H. Pocket, Maroda Sector, P.S. Sector 6, Bhilai Nagar, Post Civic Centre, Bhilai, Tahsil and District Durg, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Mr. Uttam Pandey, Advocate
For Respondent	:	Mr. P.R. Patankar and Mr. Vedant Bhelonde, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20/11/2019

1. Complainant/respondent herein filed a case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter, the "NI Act") stating that the cheque issued by the accused/petitioner herein to the tune of ₹ 4,00,000/- to him was dishonoured and he has valid cause of action for prosecution of the case for offence under Section 138 of the NI Act. During the course of the trial, accused/petitioner filed an application under Section 45 of the Indian Evidence Act, 1872 for examination of the said cheque by hand-writing expert stating that though the cheque is signed by her but the other writings in the cheque i.e. name, date, amount, etc. are not filled by her. The said application was rejected by the trial

Magistrate in view of Section 20 of the NI Act against which the accused/petitioner preferred a revision but that too was not entertained by the revisional Court being aggrieved by which this criminal miscellaneous petition under Section 482 of the Cr.P.C. has been preferred by her.

2. Mr. Uttam Pandey, learned counsel for the accused/petitioner would submit that though petitioner has admitted that her signature is present in the disputed cheque but she has not admitted to the other endorsements i.e. name, amount, etc. mentioned in the cheque as it is her case that she has never issued the disputed cheque in favour of the complainant/respondent. As such, her application deserves to be granted and the cheque has to be examined by the hand-writing expert under Section 45 of the NI Act.
3. Mr. P.R. Patankar and Mr. Vedant Bhelonde, learned counsel for the respondent would submit that since it is admitted by the accused/petitioner herself that the disputed cheque is signed by her, as such, Section 20 of the NI Act is attracted herein, therefore, both the Courts below are absolutely justified in rejecting petitioner's application under Section 45 of the NI Act to get the disputed cheque examined by a hand-writing expert.
4. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

5. In order to decide the dispute present in this petition, it would be appropriate to notice Section 20 of the NI Act, which states as under :-

“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 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.”

6. A careful perusal of the above-stated provision would show that Section 20 of the NI Act clearly mandates that an instrument can be negotiated by the maker thereof by simply signing and delivering the same to the holder in due course giving ample authority to the latter to fill up the contents of the instrument as intended by the maker thereof; once the execution is admitted, it shall be taken that the cheque was issued by the accused in favour of complainant towards the discharge of the liability.
7. The Supreme Court, in the matter of ***T. Vasanthakumar v. Vijayakumari***¹, has held as under :-

“Therefore, in the present case since the cheque as well as the signature has been accepted by the accused

¹ 2015 AIR SCW 3040

respondent, the presumption under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence. ”

8. Reverting to the facts of the present case in light of Section 20 of the NI Act and the above-stated judgment rendered by the Supreme Court in ***T. Vasanthakumar*** (supra), it is quite vivid that in the instant case, in the application filed under Section 45 of the Evidence Act, accused/petitioner had admitted her signature to be on the disputed cheque hence, Section 20 of the NI Act would squarely be applied and presumption would arise with regard to the fact that cheque has been issued by the accused/petitioner in favour of the complainant. As such, the trial Court as well as the revisional Court have rightly taken the view that since the signature on the disputed cheque has been admitted by the accused/petitioner herself, there is no need for examination of the cheque by a hand-writing expert regarding other endorsements written in the cheque i.e. name, date, amount, etc. I do not find any merit in this petition.

9. The Cr.M.P., being devoid of merits, deserves to be and is accordingly dismissed. No cost(s).

**Sd/-
(Sanjay K. Agrawal)
Judge**

Harneet