IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.-M No.8402 of 2015(O&M)
Date of Decision: January 16, 2019.

Yogita .....Petitioner

versus

Hisar Metal Industries Limited .....Respondent

CORAM: HON'BLE MR.JUSTICE RAMENDRA JAIN.

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Present: Mr.N.S.Shekhawat, Advocate, for the petitioner.
Mr.Rose Gupta, Advocate, for the respondent.

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RAMENDRA JAIN, J. (Oral)

Through this petition under Section 482 Cr.P.C., the petitioner-accused has laid challenge to the judgment dated 21.02.2015 of the Revisional Court (Annexure P3), whereby order dated 10.12.2014 (Annexure P-1) of the trial court, dismissing application of the petitioner for sending original cheque to Forensic Science Laboratory for comparing writing on the same with the hand-writing of the petitioner, was upheld.

Briefly, the respondent-company filed a complaint under Sections 138 and 147 of the Negotiable Instruments Act (for short, 'the Act') against the petitioner, her partner Smt.Lalita Aggarwal and their firm M/s AVON Tubes. After serving notice of accusation, the respondent-complainant concluded its evidence. Statement of the petitioner under Section 313 Cr.P.C. was also recorded on 25.9.2014. During her turn of leading defence evidence, the petitioner moved an application before the trial court to send the cheque in question to the Forensic Science Laboratory, Madhuban for comparing writing on the same with the hand-writing of the petitioner, which after hearing both the sides was dismissed vide order dated 1012.2014 (P-1).

Being aggrieved, the petitioner approached the Revisional Court, but remained unsuccessful, as her revision petition was dismissed vide the impugned order dated 21.02.2015 (P-3).

Learned counsel for the petitioner, drawing attention of this Court to proviso of Section 141 of the Act, urges that the petitioner being a partner in the accused firm has every right to prove her innocence by satisfying the Court that the cheque in question was not filled up by her, rather the same was mis-used by her partner. In reply to the legal notice, the petitioner had specifically alleged that she being a sleeping partner was not responsible and involved in the affairs of the accused-firm and that the cheque in question was mis-used by her partner.

On the other hand, learned counsel for the respondent refuting the above submissions contend that the petitioner is a habitual offender of usurping the money of innocent people like the respondent by taking false and frivolous pleas. Earlier also, the petitioner had been convicted in a complaint under Section 138 of the Act filed by a third person, namely, M/s Quality Foils (India) Private Limited. The word used in the proviso to Section 141 of the Act is “due diligence”. Therefore, a person, who exercises due diligence about his rights, can only be permitted to prove his innocence. In the instant case, the petitioner never lodged any FIR or filed any complaint under Section 156 Cr.P.C. against her partner or the firm for alleged mis-use of the cheque in question obtained from her under her signatures.

Having giving thoughtful consideration to the rival submissions, this Court is of the view that this petition is completely devoid of merits for the reasons follows.

The petitioner has not denied her signatures on the cheque in question. Rather, she has admitted the same.

The petitioner is now disputing the writing with which the body of cheque was filled. However, no procedure or method has been provided under the entire Act as to in which manner or by whom, body of the cheque would be filled. There is no embargo for the holder of the cheque to fill up its body, in case, blank cheque is handed-over to him by a person to discharge his liability with instructions to fill it at appropriate time.

Therefore, even if, the cheque in question is send to Forensic Science Laboratory for comparison of writing in the body of the cheque with hand-writing of the petitioner and the same is not found to be of the petitioner, in that eventuality also, the petitioner cannot be given any leverage or benefit in asmuch as when she has admitted her signatures on the cheque in question, which requires to draw presumption in favour of the respondent-complainant under Section 139 of the Act.

The procedure to be followed in a complaint under Section 138 of the Act is summary in nature. Therefore, the same has to be tried as summary case. Normally evidence in summary cases is led by the parties through affidavits.

Section 145 of the Act envisages that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the evidence of the complainant can be given on affidavit, subject to all just exceptions. The Court may, if it things fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

Hon'ble the Apex Court in *Indian Bank Association and others versus Union of India and others,* 2014(2) RCR (Criminal) 598, has given certain direction for speedy disposal of the cases relating to the dishonour of cheques. It has been directed that the accused can lead his evidence by way of affidavit. Therefore, the petitioner in defence can file her affidavit, though it is altogether a different matter as to whether the same is relied upon or believed by the trial Court.

I have gone through the judgment of Revisional Court and order of the trial court and find no illegality or perversity in the same.

For the reasons afore-stated, the instant petition is dismissed.

The parties are directed to appear before the trial court on the date fixed, i.e., 21.01.2019.

January 16, 2019 **(RAMENDRA JAIN)**
mohinder **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No