

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38626-2019

Date of Decision: 01.10.2019

Anita Rani

.....Petitioner

Vs.

Hardeep Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Suneet Kumar, Advocate, for the petitioner.

Mr. Rajvir Singh, Advocate, for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

Learned counsel for the respondent has relied upon a judgment of the Supreme Court in Bir Singh vs. Mukesh Kumar 2019 (2) RCR (Criminal) 1, from which he refers to the following paragraph:-

“42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.”

Having considered the matter, what is first to be noticed is that in the said judgment, the Apex Court was seized of appeals filed against the order passed in a revision by this Court, the petitioner in that case already having been convicted by the learned courts below.

Presently, the stage is completely different, with the petitioner wanting to, at the stage when his evidence and defence had just begin, to have the handwriting on the cheque in question analyzed by an expert, on the allegation that in fact the cheque was never filled in by him.

As already noticed in the order passed on 12.09.2019, learned counsel for the petitioner had referred to the the cross-examination of the respondent-complainant, to the effect that he had denied that he had mis-used the cheque after filling the amount in subsequently.

Thus, the contention of learned counsel is that the reasoning given by the trial Court to reject the application of the petitioner (to the effect that there was nothing put to the complainant that the cheque had been filled in by him), is a wholly perverse finding, as regards the cross-examination itself.

Consequently, the petition is allowed, with the impugned orders passed by the learned trial Court, as also by the revisional Court, set aside, and the application of the petitioner (Annexure P-4), seeking that he be allowed to examine an expert with regard to the handwriting on the cheque, is accepted, subject to the condition that the petitioner would lead such evidence positively by 31.10.2019.

October 01, 2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes