

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.3325 of 2011(O&M)

Date of decision: 24.1.2019

Davender Singh

.....Appellant

VERSUS

Parveen Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Parvez Chugh, Advocate for the appellant.

Mr. Umesh Kumar Kanwar, Advocate for the respondent.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgment and decree dated 17.03.2011 passed by the District Judge, Ferozepur whereby appeal against judgment and decree dated 21.08.2009 passed by the trial Court was accepted, suit for recovery filed by the respondent/plaintiff was decreed for recovery of Rs.2,98,000/- with interest at the rate of 12% per annum from the advancement of amount till disposal of the suit by the trial Court and future interest at the rate of 6% per annum on the amount of Rs.2,98,000/- till realization of the decretal amount.

Counsel for the appellant/defendant would argue that the respondent being proprietor of the firm was carrying business of Commission Agency at Fazilka. As the appellant was a customer and had been selling his produce through agency of the respondent, respondent had been getting signatures of the appellant on blank papers, stamp papers, vouchers etc. as security. It is further submitted that the voucher in

question has been misused by the respondent in order to fasten huge liability of Rs.2,98,000/- with interest. Another submission made by counsel is that the appellant examined Sh. Anil Kumar Gupta, Document and Handwriting Expert and he submitted his report that Digit 1 is converted to 9 and 3rd Digit 3 has been converted to 8 by way of overwriting/interpolation, therefore, decree based upon voucher Ex.P1 basis of the suit cannot be allowed to sustain. In addition, it is argued that even the expert examined by the respondent in order to counter report of Sh. Anil Kumar Gupta namely Varun Gagneja has admitted in his report Ex.PW5/B that examination of disputed figures revealed that there are some old overwriting/alteration and the same corroborates plea of the appellant that the amount mentioned in the voucher Ex.P1 has been altered by changing second and third digit, as stated by Sh. Anil Kumar Gupta.

Counsel representing the respondent, on the contrary, has supported the judgment passed by the Court in appeal with the submission that conduct of the appellant is not bona fide who even denied his signatures on the voucher but later admitted that the voucher Ex.P1 bears his signatures. It is further argued that as the appellant had not admitted his signatures on the voucher nor raised any such plea that amount mentioned in numerics is the result of interpolation/overwriting/alteration, any such plea sought to be raised by the appellant during the course of evidence cannot be considered being beyond pleadings. It is further argued that the entire story sought to be propounded by the appellant during the course of evidence with regard to alteration/overwriting gets demolished in the light of fact that in the voucher Ex.P1, the amount has also been

described in words and there is no plea of the appellant that the same has been altered/overwritten.

I have heard counsel for the parties, perused the paper-book and records.

Indisputably, the appellant was a customer at the commission agency of Parveen Kumar as he had been selling his crops through agency of the respondent. The appellant filed the written statement and raised the preliminary objections in paras 1 to 8. In para 7, he raised the plea with regard to his blank signatures being obtained on bahis, vouchers, papers and stamp papers. However, with regard to the voucher in question, he raised a categoric plea that the voucher in question is fictitious, vague and forged document and he never took any amount as mentioned in the voucher dated 18.05.1999 and never put his signatures on the alleged voucher. Once the appellant has denied his signatures on the voucher in question with the averments that same is fictitious, vague and forged document, he cannot derive any advantage to his contention from the fact that his signatures were being obtained on blank vouchers/blank papers etc. However, during the course of evidence, appellant has not denied his signatures on the voucher in question. On the contrary, the appellant sought to introduce a new defence plea that figure mentioned in the voucher have been altered in order to convert to the amount of Rs.2,98,000/-. Parveen Kumar appeared in the witness box and produced on record number of documents including account books of the firm. In his cross examination, it was suggested that actually voucher Ex.P1 is of Rs.3000/- and after adding figure 29 and converting the digit 3 to 8, the amount has been made to Rs.2,98,000/-.

The appellant examined Sh. Anil Kumar Gupta, Handwriting and Fingerprints Expert and he prepared the report on the basis of comparison. Sh. Anil Kumar Gupta had stated that digit 1 has been converted to 9 and 3rd digit 3 to 8 by describing the amount as Rs.2,98,000/-. However, Sh. Anil Kumar has not expressed any opinion if digit 2 in the beginning of the figure has been added later. He has also not corroborated plea of the appellant that figure 29 has been added before 3000 though he had stated that digit 3 has been converted to 8. However, the witness has not given any opinion with regard to age of ink used for writing the original figure and for the purpose of altering the digit 1 to 9 and 3 to 8. In the given circumstances, the Appellate Court has rightly held that the appellant cannot derive any advantage to his contention with regard to alteration in the figure describing the amount of Rs.2,98,000/-. This apart, there is no alteration/overwriting in the amount mentioned in words to the tune of Rs.2,98,000/-. Once the appellant has not admitted execution of voucher in question, there is no question of raising any such plea that the voucher has been altered/manipulated later. In this view of the matter, I do not see an error much less illegality in findings of the Appellate Court rejecting contention of the appellant with regard to alteration in the voucher in question.

To be fair to the appellant, counsel has tried to draw some advantage from the observations made in the report of Sh. Varun Gagneja PW-5. Though Sh. Varun Gagneja PW-5 has stated that there are some bold overwriting/alteration in the disputed figures but in the next line he has stated that ink of the altered parts and shade and tint is found to be similar when viewed under different colour filters. Counsel for the

appellant has failed to point out any fact elicited in cross examination of Varun Gagneja PW-5 that bold overwriting/alteration noticed by him was made subsequent in point of time. In this view of the matter, the appellant cannot seek any aid from the report of Varun Gagneja to contend that the judgment passed by the Appellate Court suffer from perversity or warrants intervention.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed with costs.

JANUARY 24, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no