

**Sr. No.128**

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

**CRM-M-40041-2019(O&M)  
Date of decision:16.10.2019**

**Pawan Kumar and others**

**.....Petitioners**

**versus**

**Ramesh Kumar Bansal**

**.....Respondent**

**Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

**Present:** Mr. Keshav Pratap Singh, Advocate  
for the petitioners.

**Rajbir Sehrawat, J(Oral)**

Present petition has been filed for seeking exercise of inherent jurisdiction of this Court for setting aside Order dated 23.04.2019(Annexure P-6) passed by the Additional Sessions Judge, Fatehgarh Sahib in Complaint No.66 dated 17.04.2012 under Section 138 of Negotiable Instruments Act, whereby the application filed by the petitioners under Section 391 read with Section 311 Cr.P.C has been dismissed.

The facts giving rise to the present petition are that the complainant had filed a complaint against the present petitioners under Section 138 of Negotiable Instruments Act (herein after, for short 'the Act') for dishonor of cheque for an amount of Rs. 90 lakhs. Before filing of the complaint, the complainant had served notice upon the petitioners and had complied with all the required conditions, as prescribed under the Act. After taking the evidence, Trial Court convicted the petitioners under Section 138 of the Act and sentenced with imprisonment for 2 years and fine of Rs. 25,000/- each.

Feeling aggrieved against the Order, the petitioners preferred

the appeal before the lower Appellate Court in the year 2016. The said appeal is pending adjudication before the lower Appellate Court. However, at the stage of final arguments of the appeal, petitioners filed the application for additional evidence; by way of examination of hand-writing expert and placing on record his report qua the writing of the amount on the cheque in 'figures'. That application has been declined by the lower Appellate Court; vide Order dated 23.04.2019. Feeling aggrieved against the said Order, the present petition has been filed.

Learned counsel for the petitioners contends that there is an interpolation in the amount written on the cheque. Therefore, the petitioners intends to prove before the Court; the fact that the amount written on the cheque has been tampered with. Learned counsel for the petitioners submits that since the petitioners are accused of the offence, for which they have already been convicted and sentenced, therefore, the petitioners should be given opportunity to defend themselves, and for that purpose, even the hand-writing expert is required to be examined. The petitioners should be granted permission to examine the expert and to bring on record his report. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in **2008(3) R.C.R.(Criminal) 9261 T.Nagappa versus Y.R.Muralidhar** to support his contention.

While considering the application filed by the petitioners, lower Appellate Court has duly considered the arguments advanced by the petitioners. Lower Appellate Court has recorded that the appeal is pending since the year 2016. Now, when the case is at the final stage of the decision, the present application has been filed only to delay the final outcome of the case. Still further, the lower Appellate Court has recorded that

the said writing on the cheque was well within the knowledge of petitioners. However, during the trial the petitioners had never even questioned the said writing. It is also observed by lower Appellate Court that even in the application moved by the petitioners, no specific reason has been assigned; why the expert was not examined during the trial or even during the appeal so far. Further, scrutinising the record on file, the lower Appellate Court has recorded that even the defence taken by the petitioners in the proceedings before the Trial Court, and the statements of the petitioners under Section 313 Cr.P.C, do not have even mention of any tampering with the amount of the cheque. Therefore, the present application has been filed as an after-thought, only to prolong the proceedings of the appeal.

Having heard the learned counsel for the petitioners and after perusing the case file, this Court does not find any substance in the argument of learned counsel for the petitioners. This Court does not find any irregularity or illegality in the Order passed by the Court below. On the contrary, the perusal of the cheque, which is placed on record of the present petition as well, shows that the amount is duly filled up on the cheque, in the 'words' as well as in the 'figures'. There is no alteration of any kind in the amount filled up in the words. There is not even any assertion by the petitioners that there is any tampering, smudging or alteration or over-writing in the amount, as filled on the cheque in 'words'. Even if it is taken that there is some over lapping writing in the amount as mentioned in the cheque, in figures, then also the Negotiable Instruments Act itself has taken care of the situation in the case of possible conflict between the amount written on the cheque in words and figures. The Act itself provides that in

such a situation, the amount written in words shall be taken as the correct amount. Taking the amount written in words itself, the case of the complainant is duly sustained because the complaint has been filed for the default of the cheque amount of Rs. 90 lakhs itself. The amount is clearly written in words 'Ninety Lakhs only'. Therefore, even if there is some kind of repeat of pen in the amount written in figures, that would not be a material fact for decision of the complaint as such. Hence examination of hand-writing expert for proving alleged over-writing in amount written in figures is otherwise also not relevant for the purpose of the present appeal.

Needless to say, as observed by the lower Appellate Court as well, that this has not even been the defence of the petitioners that they had filled up cheque for an amount of Rs. 10 lakhs which has been converted into a cheque for an amount of Rs.90 lakhs. This also shows that the Court below is justified in writing that the present application has been filed only to prolong the proceedings of the appeal as much as the petitioners can do. Still further, only discernible defence available on the file is that the cheque in question is only a security cheque. Keeping in view this assertion of the petitioners as well, the amount mentioned on the cheque becomes irrelevant. The consequences of the assertion of the petitioners, otherwise have to be considered in accordance with law. But that would not make any difference qua the amount written on the cheque; in view of the fact that the petitioners have not claimed having written any particular amount on the cheque as such.

In view of the above, finding no ground to interfere in the Order passed by the Appellate Court, the present petition is dismissed.

However, this Courts finds that the complaint in this case was

filed in the year 2012. Even the appeal against conviction of the petitioners was filed in the year 2016. Therefore, the final disposal of the matter has already been inordinately delayed. Hence, it would not be unjustified if the lower Appellate Court is directed to decide the appeal itself within a time bound frame. Hence, the lower Appellate Court is directed to decide the appeal itself within a period of two months from today.

16<sup>th</sup> October, 2019  
Shivani Kaushik

[RAJBIR SEHRAWAT]  
JUDGE

*Whether speaking/reasoned*      *Yes/No*

*Whether Reportable*                      *Yes/No*