

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 114

Criminal Miscellaneous No.M-42009 of 2021
Date of Decision: November 24, 2021

Anita Garg

..... PETITIONER(S)

VERSUS

Santosh Kumari

..... RESPONDENT(S)

...

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. Namit Khurana, Advocate, for the petitioner.

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Sant Parkash, J

The present petition has been preferred under Section 482 Cr.P.C. for quashing order dated 17.02.2020 (Annexure P-5) passed by the trial court in Criminal Complaint No.NIA/1809 of 2016, under Section 138 of the Negotiable Instruments Act, 1881 (For short, 'Act') whereby application filed by the petitioner for permission to withdraw statement dated 04.05.2019 and for sending cheque Ex.C1 to some Government Forensic Lab for comparison of the same with standard signatures of the petitioner has been dismissed.

Succinctly, respondent – Santosh Kumari, filed a complaint under Section 138 of the Act against the petitioner stating that on 22.09.2013, petitioner had borrowed a sum of ₹ 5 lac from her at the rate of interest @ 3% per month. A pronote -cum- receipt dated 22.09.2013 was

also executed to this effect. However, despite repeated demands, petitioner failed to repay the amount. Subsequently, petitioner issued one cheque bearing No.921161 dated 01.08.2016 for an amount of ₹ 10,14,800/- i.e. ₹ 5 lac as principal amount and ₹ 5,14,800/- as interest from 22.09.2013 to 31.07.2016, drawn on Canara Bank, Yamuna Nagar in favour of respondent complainant, however, on presentation, the same was returned dishonoured with remarks “insufficient funds” vide memo dated 02.08.2016 (Annexure P-1). However, petitioner denied her signatures on the cheque.

During the course of trial of aforesaid complaint, respondent and her family members called the petitioner and her husband at their house, where they assured the petitioner that they would make a statement before the trial court to the effect that the cheque in question was signed by her (petitioner herein), whereafter, the respondent – complainant would withdraw the complaint. Accordingly, petitioner suffered a statement dated 04.05.2019 before the trial court, identifying her signatures on cheque Ex.C1 (pronote) and Exs.C8 and C9 (receipts) but the respondent – complainant refused to withdraw her complaint.

In the aforesaid situation, petitioner moved an application before the trial court to withdraw statement dated 04.05.2019 and for sending the cheque Ex.C1 to Government Forensic Lab for comparison of the same with her standard signatures, on the ground that respondent had forged her signatures on a blank cheque. The application was contested by the respondent submitting that statement dated 04.05.2019 was willful and voluntary.

After hearing arguments of counsel for the parties and perusing the record, the trial court dismissed the application vide impugned order dated 17.02.2020.

Learned counsel for the petitioner has vehemently contended that the trial court has failed to appreciate the facts & circumstances as well as legal proposition. The complaint was filed by the respondent after forging petitioner's signatures on the cheque in question. The cheque was never filled or signed by the petitioner and statement dated 04.05.2019 was not willful but under compelling circumstances. Therefore, he moved an application for withdrawing the statement dated 04.05.2019 and sending the cheque in question to Government Forensic Lab for comparison of the same with her standard signatures, which has been wrongly dismissed by the trial court.

I have heard learned counsel for the petitioner and scanned the record.

Record reveals that an application under Section 311 Cr.P.C. on 07.03.2019 seeking permission to obtain specimen signatures of petitioner was moved at the stage when the case was fixed for defence evidence. The case was adjourned for three dates for filing reply which was not filed, rather, on 04.05.2019 petitioner suffered statement admitting her signatures upon Ex.C1 (pronote) and Exs.C8 & C9 (receipts). Petitioner also stated that cheque Ex.C1 was filled by her husband Ashok Garg. Pursuant to statement suffered by the petitioner, complainant had withdrawn application under Section 311 Cr.P.C. Later on, after consuming four consecutive dates for defence evidence, petitioner moved an application for withdrawing statement dated 04.05.2019 and sending the cheque in question to

Government Forensic Lab for comparison of the same with her standard signatures. The prayer made in application under Section 311 Cr.P.C. was identical and within the knowledge of petitioner prior to 04.05.2019 when she suffered the statement regarding admission of her signatures on the cheque. Had the intention of petitioner been to get her signatures compared from Government Forensic Lab, she could have given no objection to the application under Section 311 Cr.P.C. but in response thereto, she admitted her signatures in the presence of her counsel. The contention that statement was made under compelling circumstances as she was under the influence of opposite party, cannot be termed as credible, that too, when she was represented by a counsel and there was no existence of any friendly relations between the parties. Further, there is nothing on record to establish that statement dated 04.05.2019 was made on the asking of respondent or that the complainant wanted to withdraw the complaint as was allegedly agreed between them. In this view of the matter, this Court is of the considered view that the trial court has gone through each and every aspect of the case and has rightly dismissed the application filed by the petitioner while holding that filing of application by the petitioner was merely a ploy to wriggle out of admission made vide statement dated 04.05.2019.

In view of the aforesaid discussion, there is no merit in the present petition and the same is hereby dismissed.

**(Sant Parkash)
Judge**

November 24, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No

