

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

**CRM-M No. 45443 of 2021 (O&M)
Date of Decision: 29.11.2021**

Munish Chaudhary

..... Petitioner

Versus

Aman Priye Jain

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Harneet Singh Oberoi, Advocate,
for the petitioner.

Mr. S.S. Narula, Advocate,
for the respondent.

SURESHWAR THAKUR, J. (ORAL)

1. This order shall dispose of the instant petition filed under Section 482 Cr.P.C., hence assailing the order made by the learned Magistrate concerned on 19.10.2021, wherethrough, the petitioner's application filed under Section 311 Cr.P.C., read with Sections 45 & 73 of Indian Evidence Act, for seeking the apposite report of the handwriting expert, vis-a-vis, the admitted / standard writings of the concerned, on being compared with the apposite disputed writings, whether being both authored by the accused or the complainant, rather became dismissed.

2. During the pendency of criminal complaint No. *NACT-21343-2018*, appertaining to notice of accusation, being put to the accused, with respect to an offence committed, under Section 138 of the Negotiable Instruments Act, a dispute occurred amongst the contesting litigants, with respect to the scribings, borne in the dishonoured Negotiable Instrument concerned, and, appertaining to the dates of issuance thereof, being or not

in hands of the accused, and/or in hands or not in the hands of the

complainant.

3. Therefore, the litigant concerned instituted an application (supra), and, therein asked for an order, being made by the learned Magistrate concerned, that for determining the writer of date of issuance of the Negotiable Instrument concerned, a reference be made, to the handwriting expert, to enable the latter to make the apposite comparisons, and, hence making an opinion with respect to the author of the afore disputed writings. The learned trial Magistrate made a disaffirmative order thereon. Consequently the accused is aggrieved, and, has challenged the order (supra), through, his casting the instant petition.

4. The learned counsel appearing for the petitioner, has drawn the attention of this Court, to the fact, which occurs even in the impugned order, that the complainant has not denied the fact, that he has authored the date of issuance of the dishonoured Negotiable Instrument concerned, as carried therein. Thereupon, prima facie, when in a judgment of the Hon'ble Apex Court, made in case titled “**Bir Singh Versus Mukesh Kumar**”, reported in (2019) 4 SCC 197, wherein the Hon'ble Apex Court has, in relevant paragraphs 32 & 33, thereof, paras whereof stand extracted hereinafter, postulated that, the factum of the cheque, being filled up by any person other than the drawer is immaterial, if the cheque is duly signed by the drawer. However, since the Hon'ble Apex Court has also, thereafter, added therein a rider that if the cheque is otherwise valid, it would enable the Magistrate concerned, to attract against the accused, the mandate of Section 138 of the Negotiable Instruments Act.

“ 32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under

Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

*33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. **It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.** ”*

5. Therefore, It can be hence concluded, on the afore made admission, of the complainant, and, appertaining to his authoring the disputed writings (supra), as carried in the apposite dishonored Negotiable Instrument concerned, that the application (supra) was not maintainable, as ultimately, upon credible evidence emerging with respect to his inculpability, thereupon, the learned trial Magistrate concerned, may proceed to draw an appropriate verdict in accordance with law. Conspicuously, prima facie, at this stage, though the endeavour as made by the aggrieved accused, through his casting the application (supra), before the learned Magistrate concerned, and whereon, a dis-affirmative verdict was pronounced, rather is misconstituted, besides also it was dismissable, yet it may not bring any inculpable, *mens rea*, against the complainant concerned.

6. Moreso, given the learned counsel for the respondent-complainant, drawing the attention of this Court to a civil suit, becoming

filed before the Civil Court concerned, hence claiming recovery of the

amount carried in the dishonoured concerned. Importantly, with the learned counsel for respondent also placing on record the written statement filed, by the defendant-Munish Chaudhary (petitioner herein), to Civil Suit No. 4302 of 2018, instituted by the complainant-Aman Priye Jain (respondent herein) against the accused herein, and, appertaining to transactions, rather similar to the one in respect whereof, the dishonoured Negotiable Instrument, at hand became issued, and, wherein in paragraph-15 thereof, the defendant therein, who is the accused herein, acquiesces that the respective amounts carried in the negotiable instrument(s) concerned,, shall be refunded within a period of two years, and, that during this period, the defendant-petitioner will be liable to pay interest at the rate of 1.5% per annum. Therefore, prima facie, at this stage, the acquiescence (supra), may condone the afore act of the complainant, in his scribing the date of issuance, in the dishonoured Negotiable Instrument concerned.

7. Be that as it may, the impugned order does not suffer from any infirmity. However, all the relevant contests, as available under law, to the accused are yet permitted to be canvassed by him, including liberty to file the written statement (supra), before the learned Magistrate concerned.

8. Disposed of.

November 29, 2021
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(SURESHWAR THAKUR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes