

124

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

CRM-M-12047-2022

Date of decision : 14.07.2022

Sudhir Kumar

...Petitioner

Versus

Ravinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Randhir S. Hooda, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a petition filed under Section 482 of Cr.P.C. for quashing of order dated 01.12.2021 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Sohna in case NIA/202/2016 dated 25.11.2016 titled as Ravinder Vs. Sudhir Kumar, whereby an application moved by the petitioner for appointment of Finger Print Expert and Handwriting Expert, has been dismissed. Challenge is also to the Order dated 18.01.2022 vide which the Revision Petition filed by the present petitioner against the Order dated 01.12.2021 has been dismissed.

2. Learned counsel for the petitioner has submitted that the application of the petitioner for examination of a handwriting expert deserves to be allowed so as to prove that the cheque has been given by the petitioner to the respondent as a security without there being any legally

enforceable debt.

3. This Court has heard learned Counsel for the Petitioner and has perused the paper book and finds that the present revision petition is bereft of merits and deserves to be dismissed on the following grounds:-

- I. The argument raised by the petitioner before the Additional Sessions Judge, Gurugram as noticed in paragraph 8 of the impugned order is to the effect that the cheque has not been signed by him. The said argument has been rejected on the ground that there is no denial by the petitioner regarding his signatures over the cheque in question in his statement recorded under Section 313 Cr.P.C in which he had taken up the plea that he had signed the cheque for security purpose and had not disputed his signatures. Paras 8 and 13 of the Impugned Order dated 18.01.2022 are reproduced hereinbelow:

“xxx xxx

8. Learned counsel for the revisionist has contended that cheque in dispute has not been signed by him. It has further been contended that it was in the interest of justice that complainant be directed to give his handwriting before the appointed expert in order to get the report.

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13. There is hardly any case made out to show that the evidence sought to be produced at this stage eluded the applicant earlier despite exercise of due diligence. It appears to be a crude attempt on the part of the applicant to undo the findings recorded by the learned trial Court. Further more, there is no denial of accused

regarding his signatures over the cheque in question and accused in his statement recorded under Section 313 Cr.P.C has specifically stated that he had issued the cheque for security purpose. It is not the plea of the accused that cheque was not signed by him whereas it is the stand of the accused that cheque was given for security purposes. When there is no dispute regarding signatures of accused over the cheque in question, then question of appointment of handwriting expert to compare the handwriting over cheque in question does not arise.

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- II. Neither the statement under Section 313 CrPC nor the grounds of revision have been annexed alongwith the present petition to show that the said finding/observation is perverse or contrary to the record. Even the application in question has not been annexed nor any statement/evidence from the side of the complainant has been annexed along with the present petition.
- III. The complaint, as is apparent from Annexure P-1 (Pg 10), is of the year 2016 and it has been specifically recorded in paragraph 12 of the Impugned Order dated 18.01.2022 (P-2) that in spite of 12 effective opportunities, including last opportunity, no evidence has been led by the defence nor any reason has been given for not producing the said defence evidence and thus, the present application has been filed only to delay the proceedings. No zimni order has been produced on record to rebut the said observation.
- IV. Even in case, although not prima facie shown, it is taken that

the cheque was issued as a security cheque or the same was a blank signed cheque as was sought to be argued before the Judicial Magistrate First Class and as has been noticed in paragraph 2 of the impugned Order dated 1.12.2021, then also, the application for appointment of a handwriting expert to examine the handwriting in the cheque would be liable to be dismissed moreso, since 12 effective opportunities had been granted including, last opportunity and the present application has been moved after the same. A coordinate bench of this Court in Judgment reported as **2022 (2) R.C.R. (Criminal) 659** titled as “**M/s Sebro Machine Tools Pvt. Ltd and Others vs. M/s Jyoti Industrial Corporation**” has held as under:-

“In this petition the petitioners have assailed the order dated 15.02.2020 passed by the Learned Judicial Magistrate, 1 st Class, Faridabad, whereby two applications viz. (i) under Section 45 read with Section 73 of Negotiable Instruments Act for examination of the hand writing expert and for the report of the FSL and (ii) under Section 311 of Cr. P.C. for calling the witness Nos. 8, 9, 10 and 11 (cited by the complainant) for examination have been dismissed.

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8. Regarding first application the contention of the petitioners was that the cheque in question had been stolen by Mr. Davinder Kalra @ Raju Kalra, proprietor of the complainant Company with the help of unknown person and was misused by hatching a criminal conspiracy with the complainant. Neither the handwriting nor the ink of the cheque matched in any

*manner. The cheque had been manipulated and fabricated by the complainant. Said Davinder Kalra was unable to explain as to how the cheque, which was a bearer cheque, was presented and how it was crossed and made into an account payee cheque. The complainant even did not know the whereabouts of the employee of the petitioner Company who had handed over the cheque to him. It was submitted that the handwriting as well as ink used in the disputed cheque were admitted by the complainants' witnesses, therefore, it was necessary to send the disputed cheque for obtaining FSL report to clear the doubts. Learned trial Court while dismissing the application noted that the signatures on the cheque had been admitted by the accused. The petitioner while recording his defence statement under Section 263 (g) had specifically admitted the signatures on the cheque in question. The trial Court relied upon a decision of this Court in **Gurmit Singh vs. State of Haryana, 2012 (2) RCR (CrL) 306** wherein it has been held that once an accused has admitted the signatures on the cheque, he could not escape his liability on the ground that the same had not been signed by him. When the blank cheque is signed and handed over, it means that the person signing it has given implied authority to the holder of the cheque to fill the blank which has been left while signing the cheque.*

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12. This petition is accordingly dismissed."

In the above case, it was observed that once the signature on the cheque is admitted and a blank cheque is given then, the person signing it has given implied authority to the holder of the cheque to fill the blanks and thus, the application for

appointing a handwriting expert to show that the handwriting and the ink of the disputed cheque was not of the petitioner therein, was dismissed.

- V. The Hon'ble Supreme Court of India in a case titled as **Bir Singh vs. Mukesh Kumar**, reported as **2019(4) SCC 197**, has held that the Court shall presume the liability of the drawer of the cheques for the amount for which the cheques are drawn and in the aforesaid case, the cheque was stated to be a post dated cheque/signed blank cheque which had been allegedly subsequently filled up by the complainant. It is also observed that it would be 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 and even the said cheque if handed over voluntarily would not become invalid in case it is filled up some other person other than the drawer. The relevant portion of the said judgment is reproduced hereinbelow:-

“xxxxxx

22. In Hiten P. Dalal vs. Bratindranath Banerjee, this Court held that both Section 138 and 139 require that the Court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn. Following the judgment of this Court in State of Madras vs. VaidyanathaIyer, AIR 1958 Supreme Court 61, this Court held that it was obligatory on the Court to raise this presumption.

23. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the

accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non- existence of the presumed fact as held in Hiten P. Dalal (supra).

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36. 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.

*37. 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.***

38. If a signed blank cheque is voluntarily presented to

a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

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40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

- VI. A Coordinate Bench of this Court in *Shalini Enterprises Vs. India Bulls Financial Service*, reported as 2013(2) CCC 835, has held that the petitioner cannot escape liability on the ground that the cheque in question was a security cheque. The relevant portion of said judgment is reproduced hereinbelow:-

“His additional plea is that the cheque which was presented for encashment was actually a security cheque and hence no liability would arise by dishonour of such a cheque.

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Additional plea of the petitioner that dishonour of a security cheque can not fasten the liability on the drawer under the Negotiable Instruments Act is also not acceptable. There can be no doubt regarding the fact that the security cheque is an integral part of the commercial process entered into between the Petitioner and Respondent/ Complainant. The security cheque is not only a deterrent for the drawer against dishonoring his financial commitment but can also be legally and

validly utilized towards the discharging of the liability of the Drawer. It cannot by any stretch be argued that a security cheque is not handed over or issued in pursuance of any undischarged liability. To hold so would defeat the whole purpose of a security cheque. In the considered opinion of the Court, a security cheque is an acknowledgment of liability on the part of the drawer that the cheque holder may use the security cheque as an alternate mode of discharging his/its liability. Thus the argument of the learned counsel for the petitioner that on dishonouring of a security cheque no offence punishable under section 138 of the Negotiable Instruments Act is made out.”

A perusal of the above judgment would show that it has been observed that even if a cheque is a security cheque, the same is an integral part of the commercial process and the same acts as a deterrent for the drawer against dishonouring his financial commitment and can also be used towards discharging the liability of the drawer. It is further held that to hold otherwise, would defeat the whole purpose of a security cheque.

VII. It has been observed in para 14 of Impugned Order dt 18.01.2022 to the effect that the evidence which is required to be led was very much within the knowledge of the petitioner and was not led in spite of 12 effective opportunities and in case, such an application would be allowed, then, there would be no end to grant of opportunities moreover, if the defence wanted to lead any evidence on the aspect on which an

application has been moved by the Petitioner, it was always open to the Petitioner to examine a handwriting expert in his defence. The Court has specifically found that the application has been moved to delay the proceedings, which finding cannot be faltered with.

VIII. No judgment has been cited by the Learned Counsel for the Petitioner in support of his arguments.

IX. No perversity or illegality or infirmity has been pointed out in the impugned orders so as to call for interference in the exercise of power under Section 482 C.r.P.C. This Court is also of the view that the present application has been filed only to delay the proceedings in the Complaint under Section 138 Negotiable Instruments Act.

4. Accordingly, the present petition has been dismissed.

14.07.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No