

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50695-2019 (O & M)

Date of decision: 22.09.2022

Pushpa Rani and anr.

..... Petitioners

V/s

Sudhir Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. A.S. Rai, Advocate,
for the petitioner.

Mr. Naveen Bawa, Advocate, for the respondent.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside the order dated 31.10.2019 (Annexure P-10) in COMA-7878/16 under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') and order dated 14.09.2018 (Annexure P-8) in COMA-7878/16 under Section 138 of the N.I. Act passed by the Judicial Magistrate Ist Class, Ludhiana whereby the application for recalling and for permission to the petitioners-accused to examine the hand-writing and finger print expert has been dismissed.

2. The brief facts of the case are that the petitioners-accused are said to have approached the respondent-complainant for advancement of a loan for a sum of Rs.4,00,000/-. In order to repay the same, the petitioner No.1-accused is said to have issued a cheque No.479496 dated 04.07.2016

for an amount of Rs.4,00,000/- drawn on Oriental Bank of Commerce, Dharampura, Ludhiana, with an assurance that on encashment, the cheque would be cleared. However, the said cheque issued by the petitioner No.1-accused to the respondent-complainant was dishonoured with the remarks “funds insufficient” This lead to sending a legal notice, filing of a complaint under Section 138 of the N.I. Act. and subsequent summoning order.

3. Thereafter, the complainant-respondent (CW-1/Sudhir Kumar) got recorded his cross-examination on 04.08.2017 and the same is on record as Annexure P-5.

4. Pursuant thereto, an application was moved by the petitioners dated 19.02.2018 for allowing her to examine a handwriting expert as it was the case of the petitioner No.1-accused that the said cheque purportedly issued by her contained her forged signatures.

5. The said application made to be declined by the Judicial Magistrate Ist Class, Ludhiana vide order dated 14.09.2018 (Annexure P-8) by recording a finding that the cheque had been dishonoured not on the ground of “signatures differs” but on the ground of “funds insufficient”. It was further held that the petitioner No.1-accused had taken contradictory pleas. On the one hand she stated that the cheque did not bear her signatures and on the other hand, she stated that the complainant had misused the cheque. Therefore, the Court came to the conclusion that the application had been filed to delay the proceedings.

6. Subsequent thereto, an application for recalling the aforementioned order dated 14.09.2018 (Annexure P-8) and for permission to the accused-petitioners to examine the handwriting/finger expert was

moved once again. It was stated that the cheque, in question, was not signed by the petitioner No.1-accused as was borne out from the notice of accusation and statement under Section 313 Cr.P.C.. It was also submitted that DW-1 had deposed that the cheque, in question, was not signed by accused-petitioner No.1 and DW-2 had clarified that as per the clearance norms if there was no balance in the account then the “signatures difference” was not to be seen by the bank for the purpose of clearance of the cheque. Meaning thereby that if the funds were insufficient then that ground itself was sufficient to dishonour the cheque and the examination of the signatures was not to be done by the bank employee. The said application for recalling and consequential permission to examine the handwriting and finger-print expert was dismissed on the ground that the Court could not review its order. A copy of the order dated 31.10.2019 is attached to the petition as Annexure P-10.

It is these two orders which are impugned in the present petitioner.

7. The learned counsel for the petitioner contends that it is the consistent stand of the petitioner No.1-accused in the notice of accusation as also in the statement under Section 313 Cr.P.C. that the cheque, in question did not bear her signatures.

He contends that the petitioner No.1-accused had examined one Anil Kumar, her son as DW-1 who had stated that the cheque, in question, did not bear her (petitioner No.1-accused) signatures. DW-2/Prince Kumar, Single Window Operator, Oriental Bank of Commerce, Dharampura Branch, Ludhiana, clarified that as per clearance norms, if there was no balance in

the account, then the “signature difference” was not be seen by the bank for the purpose of clearance of the cheque and therefore, merely because the cheque was dishonoured on account of “insufficient funds” would not lead to the presumption that the bank found the signatures of the accused/petitioner No.1 on the cheque to be genuine.

It is contended that the petitioner No.1-accused is the real aunt of the respondent-complainant and apparently, the respondent-complainant has fabricated the signatures on the cheque as was apparent from a look at the cheque which shows that the digit “1” has been converted to the digit “4”.

It is contended that no loss whatsoever would be suffered by the respondent-complainant if an opportunity was granted to the petitioner No.1-accused to examine a handwriting and finger-print expert. Even otherwise, the complainant-respondent would have an opportunity to cross-examine the said witness.

8. The learned counsel for the complainant-respondent, on the other hand, contends that the present application has been moved only to delay the proceedings. The petitioner No.1-accused had taken contradictory stands. On the one hand, she has stated that the cheque, in question, has been misused whereas on the other hand, she states that the cheque does not bear her signatures. He, thus, contends that the present petition is without merits and the same ought to be dismissed.

9. I have heard the learned counsel for the parties at length.

10. In the present case, a perusal of the statement under Section 313 Cr.P.C. would show that it is the clear and consistent stand of the petitioner

No.1-accused that the cheque, in question, did not bear her signatures. The cheque is said to have been misused as the signatures have not been affixed by the petitioner No.1-accused. The relevant extract of the statement of petitioner No.1-accused under Section 313 Cr.P.C. is reproduced hereinbelow:-

“Question: Do you want to say anything in your defence ?

Answer : I am innocent, I am falsely implicated in this case. It have not committed any offence. The complaint filed by the complainant is forged and frivolous. The cheque in question has been misused by the complainant. The cheque in question does not bear my signatures. The cheque in question was never issued to discharge any legal liability towards the complainant. The documents produced by the complainant are forged and fabricated”.

Apparently, the petitioner No.1-accused has not taken contradictory stands as is set out in the impugned orders.

11. Not only this, a perusal of the cross-examination of the complainant/respondent would also show that a suggestion was put to him that the cheque, in question, did not bear the signatures of the petitioner No.1-accused and that it was forged and fabricated. Of course, the said suggestion has been denied. However, it is clear that the stand of the petitioner No.1-accused is that the cheque, in question, did not bear her signatures. The relevant extract of the cross-examination of the complainant is as under:-

“It is wrong to suggest that the cheque in question does not bears the signature of the accused. It is wrong to suggest that the documents produced by me are forged and fabricated documents. It is wrong to suggest that I have deposed falsely”.

12. It would also be relevant to mention here that merely because the cheque was dishonoured on account of “insufficient funds” and not on the ground of “signature differs” would not lead to the presumption that the signatures on the cheque were genuine. DW-3, an employee of the bank, has clearly deposed to the effect that the where the cheque was dishonoured on account of insufficiency of funds then the difference in the signatures was not to be looked at by the bank for the purpose of clearance of the cheque proceeds.

13. In view of the above, I find considerable merit in the case of petitioner No.1-accused. Thus, the present petition is allowed and the orders dated 31.10.2019 (Annexure P-10) and 14.09.2018 (Annexure P-8) passed by the Judicial Magistrate Ist Class, Ludhiana are hereby quashed.

14. The Trial Court shall appoint a handwriting and finger-print expert of its choice at the costs to be incurred by the petitioner No.1-accused withing a period of 04 weeks from the next date fixed before it, who shall examine the document/s/cheque and present a report in this regard before the Trial Court within a period of 04 week from his appointment. Pursuant thereto the Trial Court shall conclude the trial within a period of 08 weeks thereafter.

15. The present petition is disposed of with the directions as aforesaid.

(JASJIT SINGH BEDI)
JUDGE

September 22, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No