

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.250 OF 2018
WITH APPLN/1014/2019 IN REVN/250/2018

Ruksana w/o Afsar Sayyad,
Age 65 years, Occu. Household,
R/o. Omerga, Taluka Omerga,
District Osmanabad

.. Applicant
(Original Accused)

Versus

Kamalbai w/o Gopinath Rathod,
Age 43 years, Occu. Household,
R/o. Omerga, Taluka Omerga,
District Osmanabad

.. Respondent
(Original complainant)

Mr. A. A. Khan, Advocate for Applicant;
Mr. Yogeshwar L. Bidve, Advocate for Respondent

CORAM : S. G. MEHARE, J.

DATE : 09-01-2023

ORAL JUDGMENT :-

1. Heard the learned counsels for the respective parties.
2. The learned Judicial Magistrate First Class, Omerga, convicted the present applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to suffer simple imprisonment for 15 days by order dated 21.02.2013 passed in S.C.C. No.968 of 2006.

3. The applicant had impugned the said order before the learned *Adhoc* District Judge-1, Omerga, in Criminal Appeal No.4 of 2013. By the order dated 16.07.2018, the learned *Adhoc* District Judge upheld the judgment and order of the learned trial Court; however, he reduced the imprisonment till the rising of the Court.

4. The learned counsel for the applicant has vehemently argued that both Courts did not consider that the change in the year on the cheque in dispute was a material alteration, though supported by the handwriting expert's opinion. Both the Courts have discarded the defence observing that it was created evidence. The case of hand loan has also been discarded.

5. The learned counsel for the respondent/complainant would argue that though the handwriting expert was appointed, the applicant never disputed the signature over the date column of the cheque. She had acknowledged the correction made in the year mentioned on the cheque in dispute. Therefore, it is not a material alteration to lead to the negotiable instrument void.

6. The learned counsel for the applicant has relied on the following cases;

- (i) ***Loonkaran Sethia etc. Versus Mr. Ivan E. John and others etc., AIR 1977 Supreme Court 336;*** and
- (ii) ***P. Jayamadha Versus L. Kumar, 2017(3) MLJ (Criminal) 148.***

7. A short question for consideration is whether the alteration in the year of the cheque is a material alteration that renders the negotiable instrument void against the applicant/accused.

8. No doubt, changing the year of the cheque is a material alteration to bring the cheque in limitation for encashment. In the case of **Loonkaran Sethia** (*supra*), the Hon'ble Supreme Court laid down the law that the effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed.

9. In the case of **P. Jayamadha** (*supra*) discussing Section 87 of the Negotiable Instruments Act, the Court has held that if a person who consents to alteration, as well as an individual who made alterations, are dis-entitled to complain against such alteration, i.e. if the drawer of cheque himself altered cheque for validating or re-validating same instrument, he cannot take advantage of it later by saying that cheque became void as there is material alteration thereto. Even if the 'Holder of the Cheque' or 'Payee' made the alteration with the consent of the drawer thereof, such alteration also cannot be employed as a ground to resist the right of the Payee or holder thereof. It is always a question of fact whether alteration was made by drawer himself, whether it was made with the consent of the drawer, requires

evidence to establish aforesaid issue/question whenever it is disputed.

10. Section 87 of the Negotiable Instruments Act says that a person who consents to the alteration and the individual who made the alteration are disentitled to the complaint against such alteration. To make any material alteration in the negotiable instrument, consent of the drawer is a *sine qua non*. In simple words, if any alterations have been made without the consent of the party to the negotiable instrument, it becomes void against anyone who is the party to such a negotiable instrument at the time of making such alteration.

11. The law is well settled that once a cheque is issued, it is to presume that the legally enforceable debt exists and is enforceable. Where alterations have been made in the cheque and drawer signs over it, that would indicate that the said alterations have been made with the consent of the drawer, then such alteration would not disentitle the drawee to negotiate the instrument.

12. Here in the case, the trial Court has specifically observed that though the issue was referred to the handwriting expert, there was a signature of the accused over the date column on the cheque issued. The accused never denied his signature above the date column of the cheque. Therefore, the trial Court has correctly

observed that the accused acknowledged the correction of the date i.e. year of the cheque. Further, the learned Judicial Magistrate has correctly given the reasons to disbelieve the alteration put forth by the complainant. Therefore, accepting that the alterations disentitle the respondent from negotiating the instrument would be inappropriate.

13. The reasons assigned for the conclusion by the learned Magistrate are free from errors and correctly appreciated the evidence. The impugned order does not warrant interference. Hence, the order:-

ORDER

- (i) The petition stands dismissed.
- (ii) R & P be returned to the concerned trial Court.
- (iii) Rule stands discharged.
- (iv) In view of the dismissal of the revision application, the pending criminal application stands disposed of.

**(S. G. MEHARE)
JUDGE**

rrd