

CRM-M-49102 of 2017
Date of Decision: March 23, 2023

...Petitioner

...Respondent

Present:- Mr. N.K. Manchanda, Advocate
for the petitioner.

Mr. P.S. Jammu, Advocate for
the respondent.

DEEPAK GUPTA, J.

Prayer in this petition is to quash order dated 16.11.2016 (Annexure P.4) passed by learned Additional Chief Judicial Magistrate, Moga, whereby application of the petitioner to direct the respondent-complainant to give his specimen handwriting in NACT Case No.299 of 2015 dated 04.08.2015 titled Manjit Singh Vs. Sushil Kumar, has been dismissed; and the order dated 23.10.2017 (Annexure P.6) passed by learned Additional Sessions Judge, Moga whereby revision against the aforesaid order dated 16.11.2016 has been dismissed.

Complaint (Annexure P.1) was filed by respondent to prosecute the petitioner under Section 138 read with Section 420 IPC in respect of dishonor of cheque dated 10.06.2015 for an amount of ₹2 lacs. After recording preliminary evidence, petitioner was summoned. During proceedings, complainant was being cross-examined and he was confronted with the document Mark A stated to be in his handwriting but respondent denied the handwriting of that document. Petitioner then

moved an application to direct the respondent- complainant to give his specimen handwriting so as to compare his handwriting with document Mark A. The application has been dismissed by way of the impugned order dated 16.11.2016 and the revision against that order has been dismissed by learned Additional Sessions Judge, Moga.

It is contended by learned counsel for the petitioner that respondent had taken two blank signed cheques as security from the petitioner at the time of advancing the loan in 2013. The loan amount had already been paid but respondent did not return the cheque and by misusing the same, filed the complaint. It is submitted further that entire amount was paid to the respondent by way of instalments of ₹500/- daily regarding which handwriting Mark A was confronted to the respondent but he refused to identify the said handwriting.

On the other hand, contention of learned counsel for the respondent is that cross-examination of the complainant- respondent is being wrongly interpreted by the petitioner. Complainant had admitted to have advanced earlier loan to the petitioner but the same had been paid and the cheque in this case was for the different loan. Learned counsel for the respondent also placed on record copy of the writing Mark A, which was confronted to the complainant, which as per him simply carries entry of ₹500/- each regarding the milk sold. Neither the name of the complainant nor that of the accused is mentioned on Mark A and so the said writing cannot be connected with the case in question.

After hearing learned counsel for both the parties and perusing the impugned orders, I find no illegality in the orders passed by

the Courts below.

Signature on the cheque in question are admitted by the petitioner- accused and so there is presumption under Section 139 of the Negotiable Instruments Act in favour of the complainant- respondent. It is for the petitioner to rebut the said presumption. Petitioner wanted to confront the respondent with a document Mark A, which neither carries the name of petitioner nor that of the respondent. Besides, cheque is for an amount of ₹2 lacs whereas Mark A contains the entries of payment of ₹500/- each on different days on 16 occasions i.e. for a total amount of ₹8,000/-. In these circumstances, the contention of the petitioner at this stage is hard to believe that he had made entire payment in respect of which writing Mark A was written by the respondent.

In view of the aforesaid circumstances, finding no illegality or material irregularity in the impugned orders, the present petition is hereby dismissed.

March 23, 2023

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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No