IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(242)

CRM-M-28897-2023
DATE OF DECISION:- 15.12.2023

REETU YADAV **…PETITIONER**

VERSUS

LAKHPAT **…RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Komal Sharma, Advocate for
Mr. Jagdeep Singh, Advocate for the petitioner.

Mr. Sarvesh Malik, Advocate for the respondent.
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SUVIR SEHGAL, J. (***Oral***)

1. Assailing orders dated 06.02.2023, Annexure P-6, and 06.03.2023, Annexure P-1, passed by JMIC, Gurugram and Additional Sessions Judge, Gurugram, respectively, petitioner has approached this Court by way of present revision petition.

2. Factual position is not in dispute.

3. Complaint dated 01.11.2017, Annexure P-3, has been filed by the respondent under Section 138, 141 and 142 of the Negotiable Instruments Act, 1881 (for short "N.I. Act") claiming that an amount of Rs.15 lacs was given to the accused-petitioner in installments by way of a friendly loan and in discharge of the legal debt, she issued a cheque dated 12.09.2017 drawn on ICICI Bank, Sushant Lok Branch, Gurugram for the said amount. However, on presentation, cheque was returned unpaid with the endorsement that funds are insufficient. In her defence, accused-

petitioner took a plea that she never received the legal notice and the cheque in dispute does not bear her signature. An application, Annexure P-5, was filed by her for referring the cheque to a Forensic Expert to compare the handwriting on the cheque with her admitted signatures and also to know the aging of the ink used to fill in the cheque. This application has been declined by the Trial Court vide impugned order, Annexure P-6, which has been upheld in revision vide order, Annexure P-1.

4. Placing reliance upon the judgment of the Supreme Court in ***Kalyani Baskar (Mrs.) Versus M.S. Sampoornam (Mrs.) 2007 (2) SCC 258,*** counsel for the petitioner has contended that with the rejection of the application, accused-petitioner has been denied a fair trial inasmuch as she did not get an opportunity to rebut the statutory presumption.

5. Opposing the petition, counsel for the respondent, who has filed his Power of Attorney, which is taken on record, has placed reliance upon the judgment of the Supreme Court in ***L.C.Goyal Versus Suresh Joshi and others (1999) 3 SCC 376*** to urge that the disputed cheque was dishonoured by the bank on account of insufficient funds and not on account of difference in signatures. Therefore, there is no need to send the cheque to a Forensic expert.

6. I have heard counsel for the parties and perused the paper-book with their able assistance.

7. Discussing the judgment of the Supreme Court in ***Kalyani Baskar's case*** (supra), High Court of Delhi ***S. Minz Versus Madhu Bala Gupta 2012 (5) RCR (Criminal) 430*** held as under:-

> *"6. …… The bank had not disputed the signatures of the petitioner on the cheque. The cheques were dishonored*

due to insufficiency of funds in the account of petitioner. The judgment of Kalyani Bhaskar (Supra) is clearly distinguishable from the present case, as in that case the bank manager, during cross-examination had clearly stated that the signatures on the cheque had not been verified by the bank at the time of dishonor of the cheque. No such statement has been made by the bank official in his examination before the learned MM. Further in the case of P.R. Ramakrishnan (P.R. Ramakrishnan v. P. Govindarajan, 2007 CriLJ 1997), the Madras High Court had allowed the petition for verification of signatures on cheque on the facts of that case, as the reasons given by the trial Court for dismissing the application of the petitioner for verification of the signature, was delay in filing of the application, which was not considered justified. The learned MM in the present case has given sufficient and cogent reasons for dismissing the application of the petitioner."

8. Adverting to the facts of the present case, there is nothing on the record to show that the bank official is his statement has stated that the signatures on the disputed cheque were tallied with or were different from the signatures in the bank record. The defence being taken by the accused-petitioner is clearly an afterthought. A drawer, who signs a cheque and hands it over to payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption under Section 139 of N.I. Act. It has

been held by the Supreme Court in ***Oriental Bank of Commerce Versus Prabodh Kumar Tewari 2022 SCC Online SC 1089*** that the presumption, which arises on the signing of the cheque, cannot be rebutted merely by the report of a hand-writing expert.

9. Furthermore, insofar as the second prayer in the application, Annexure P-5, is concerned, the matter has been set to rest by the High Court of Bombay in ***Dnyaneshwar Eknath Gulhane Versus Vinod Ramchandra Lokhande 2023 SCC Online Bombay 2431*** holding that there is no scientific method available in the forensic science to scientifically assess the age of the ink or the handwriting unless in future due to scientific advancements, new methods are invented to find out the age of the writing.

10. In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed. However, nothing stated herein shall prejudice the final adjudication of the case on its merit by the Trial Court.

(SUVIR SEHGAL)
JUDGE

15.12.2023
Kamal

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No