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

203 **CRM-M-46205-2022**
Date of Decision: 22.02.2023

Panipat Hire Purchase & Leasing Pvt. Ltd. .....Petitioner

Vs.

Pankaj Vaid .....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Pawan Kumar Hooda, Advocate
for the petitioner.

Mr. Jaswant Singh, Advocate
for the respondent.

****

DEEPAK GUPTA, J.

Power of attorney on behalf of respondent has been filed by Mr. Jaswant Singh, Advocate. Same is taken on record.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash order dated 24.08.2022 passed by Learned Additional Sessions Judge, Panchkula whereby the revision against order dated 16.11.2021 of Trial Court, was dismissed.

Complaint case bearing No.NACT/220 of 2016 titled as 'Panipat Hire Purchase Vs. Pankaj Vaid' under Section 138 of the Negotiable Instruments Act is pending in the Court of Learned Judicial Magistrate 1st Class, Kalka, District Kalka.

The case was at the stage of defence evidence, when the accused moved an application seeking permission to appoint handwriting expert for comparing the writing filled in the body of the cheque in question and to ascertain the age of the ink used on the cheque as well as on the pronote. The said application was allowed by the Trial Court on 16.11.2021, against which complainant filed a revision before the Sessions Court. The revision has been dismissed by Learned Additional Sessions Judge, Panchkula vide impugned order dated 24.08.2022, against which this petition has been filed.

Learned counsel for the petitioner-complainant contends that once the signature on the cheque are admitted by the accused, it is immaterial as to who had filled in the contents of the cheque and for that purpose permission to examine handwriting expert could not be granted.

Learned counsel has referred to **Oriental Bank of Commerce versus Parbodh Kumar Tewari 2022 LiveLaw (SC) 714**. In the cited authority, Hon'ble Supreme Court after referring to the presumption available to the holder of the cheque under Section 139 of the Negotiable Instruments Act, relied upon **Bir Singh versus Mukesh Kumar (2019) 4 SCC 197** wherein it was held as under:

> *"33.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.*

34. 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.

[…]

36. 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."*

(emphasis supplied)

The aforesaid view was reiterated by a three-Judge Bench of Hon'ble Supreme Court in **Kalamani Tex v. P. Balasubramanian (2021) 5 SC 283**.

Hon'ble Supreme Court held that a drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability, as presumption arises under Section 139, in favour of the payee.

Hon'ble Supreme Court then referred to **Anss Rajashekar v. Augustus Jeba Ananth (2020) 15 SCC 338** wherein decision of three-

Judge Bench of Rangappa v. Sri Mohan 2010-11 SCC 441 on the presumption under Section 139 was reiterated.

It was held as under:

> *12. Section 139 of the Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it, in discharge, in whole or in part, of a debt, or liability. The expression "unless the contrary is proved" indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a "reverse onus clause" the three-Judge Bench of this Court in Rangappa held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination. The standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities. This Court held thus:*
>
> *"28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in*

order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

(emphasis supplied)

After referring to the aforesaid judgments, Hon'ble Supreme Court in ***Oriental Bank of Commerce Versus Prabodh Kumar Tiwari (supra)*** case concluded as under:

> *17. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.*
>
> *18. Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability.*

In view of the legal position as above, it is held that once the signature on the cheque is admitted by the accused-respondent, it is immaterial as to who had filled in the details in the cheque and therefore, no purpose is going to be served by allowing the application for appointing the handwriting expert.

Consequently, present petition is hereby allowed. Impugned orders are hereby set aside.

February 22, 2023 **(DEEPAK GUPTA)**
Neetika Tuteja **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No