HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CRM-A-233-2024 (O&M)
Date of Decision: 16.10.2024

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Rajbir ... Applicant

VS.

M/s Akash Kumar Parkash Kumar & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Abhimanyu Singh, Advocate for the applicant

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Sandeep Moudgil, J.

(1). This application under Section 378(4) CrPC has been filed by the applicant/appellant seeking permission to file an appeal against the order dated 13.12.2023 passed by the Sub Divisional Judicial Magistrate, Loharu vide which the complaint case No.816/II-C of 2018 instituted by the applicant/complainant on 17.12.2018 has been dismissed and respondent No.2 has been acquitted.

(2). Petitioner-complainant-Rajbir lodged a complaint against accused Akash Kumar and another stating that in order to discharge his debt liabilities towards the petitioner-complainant, the respondent issued cheque bearing No.370161 dated 01.09.2018 of Rs.3,00,000/- drawn on Punjab National Bank, Branch Office Loharu, however, the same could not be encashed due to insufficient funds in the account as informed by the Bank vide memo dated 15.11.2018 and as such the said cheque stood dishonoured and remained unpaid. Thereafter, the complainant got served a notice dated 21.11.2018 upon the respondent demanding the aforesaid payment but the same had not been paid resulting into filing the present complaint.

(3). The trial Court vide judgment dated 13.12.2023 dismissed the above said complaint on the ground the petitioner-complainant could not prove

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on record the outstanding due against the respondent as on the date of issuance of cheque i.e. on 01.09.2018 relying on the fact that as per Cheque Ex.C1, after the name of the complainant, name of one Deshram is also mentioned which shows that there is material alteration in the cheque inasmuch as the said cheque was never issued in favour of the father of the complainant, namely, Deshram.

(4). It is argued that the trial court ignored that the respondent-accused has admitted that cheque has been given by him and by wrongly giving the benefit of doubt to respondent-accused has acquitted him only on the basis of alteration on the cheque and by presuming that the said cheque was given for the purpose of security. A perusal of the order passed by the trial court would reveal that the cheque seems to have been issued in the name of the petitioner-complainant and after his name, the name of his father Deshram was also found to be written but as per the version of the respondent, the cheque was issued in favour of the petitioner-complainant and some material alteration was also found on the cheque.

(5). In this regard, it would be apposite to refer to Section 87 of NI Act which reads as follows:-

> ***"87. Effect of material alteration. -***
> *Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties"*

(6). A meticulous reading of Section 87 of the NI Act would depict that it authorizes alteration in two contingencies: - (i) if a particular alteration has been made with the consent of the parties; or (ii) if the alteration is done in order to carry out common intention of the parties. However, in the present case

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neither of these contingencies are shown to have been executed by the complainant which may authorize him to insert the name of his father Deshram on the cheques said to have been issued by the respondents. There is nothing on record which may remotely suggest that while inserting any words or expression on the instrument, the respondents were taken into confidence or that it was witnessed by anyone. Further, the insertion of the name of petitioner's father also does not show that it was carried, uninformed to the respondent, to fulfill any common intention.

(7). The Apex Court in the case of ***Seth Loonkaran Sethia vs Ivan E. John reported in AIR 1977 SC 336*** explained the term 'material alteration' in the instrument which shall imply as the one which infringes the rights or legal position of parties and consequently varies the legal effect of an instrument. The relevant portion of the said judgment reads as under:-

> *"A material alteration, is one which varies the rights, liabilities or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed."*

(8). Although a cheque is a transferable and negotiable, the presumption under Section 138 of the NI Act only applies if the pre-conditions laid therein are met. However, the petitioner-complainant unilaterally altered the cheque by inserting the name of his father without the accused's authority or knowledge, rendering the cheque void due to material alterations and the prosecution under Section 138 as unsustainable. The action of material alteration has to be seen in

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conjunction with the assertion that the respondent never issued the cheque in discharge of his legal debt liability. Albeit the cross-examination of Sher Singh, Secretary of Akhil Bhartiya Kisan Sabha (CW4), it emerges that that the cheque in question was given by the accused to the petitioner-complainant 'under pressure' of officials of Market Committee and as such, the trial court finding cannot be faulted with being based on proper appreciation of facts and legal position.

(9). Further, as regards the contention that the trial court wrongly observed that the petitioner-complainant had to prove the outstanding due on the date of issuing of cheque in question i.e. 01.09.2018 and since the same has not been proved on record, therefore no legal liability accrued upon the respondent, in the cross-examination of the petitioner-complainant, it has come on record that he sold 319 quintals of wheat but did not have knowledge as to how much its cost was. Had there been actually any business transaction between the petitioner-complainant and the respondent, the receipt should bear the name of the firm or the signature, which are conspicuously missing in Ex.C6 to C15 before the trial court. In this view of the matter, there can be no exception to the view taken by the trial court in holding that the complainant/petitioner failed to prove the outstanding due against the respondent.

(10). Dismissed.

16.10.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*

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