

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-4483-2024 (O&M)
Date of Decision: 31.01.2024

Manoj KumarPetitioner

Versus

Chaudhary AutomobilesRespondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sahil Gupta, Advocate, for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 03.01.2024 (Annexure P-6) passed by the learned Additional Sessions Judge, Hisar vide which a revision petition filed by the petitioner so as to challenge order dated 18.07.2023 (Annexure P-5) passed by the learned Judicial Magistrate Ist Class, Hisar, has been dismissed.
2. The petitioner is arrayed as an accused in a complaint under Section 138 of the Negotiable Instruments Act filed against him by the respondent – Chaudhary Automobiles with respect to dishonor of a cheque for an amount of Rs.14,59,248/- alleged to have been given by the petitioner to the complainant – Chaudhary Automobiles in discharge of outstanding dues towards business transactions.
3. Pursuant to summoning of the petitioner, the complainant – firm led its evidence and upon conclusion of its evidence, the statement of the petitioner/accused in terms of Section 313 Cr.P.C. was recorded, wherein he

admitted his signatures on the cheque in question. The petitioner/accused during defence evidence moved an application seeking permission to get the hand-writing, as existing on the deposit voucher (Ex.D-3), examined from a hand-writing expert so as to establish that the petitioner/accused had deposited an amount of Rs.9 lakhs in the account of the complainant – firm on 11.09.2018, but the complainant – firm had not adjusted the said amount in favour of the petitioner/accused. The trial Court, however, dismissed the said application vide order dated 18.07.2023 (Annexure P-5) while observing that the voucher in question was signed by one ‘Bhup’, who is an employee of the complainant – firm and that the same would not establish that it is the petitioner/accused, who had deposited the said amount.

4. The petitioner/accused challenged the aforesaid order dated 18.07.2023 (Annexure P-5) by way of filing a revision petition before the Court of Additional Sessions Judge, Hisar, but the said revision petition was also dismissed vide order dated 03.01.2024 (Annexure P-6), which has been assailed before this Court.
5. Learned counsel for the petitioner submits that both the courts below fell in error in declining the application moved by the petitioner for getting the bank voucher examined from a hand-writing expert and that on account of dismissal of the said application, the petitioner stands seriously prejudiced in establishing his defence. Learned counsel further submits that defence witness examined by the petitioner/accused i.e. DW-1 Ajay, SO, Axis Bank, Hisar during his cross-examination clearly stated that in case a 3rd party deposits an amount, then he would record his name on the voucher, which would be reflected in the statement of accounts and in case the amount is deposited by the account-holder, then the depositor is recorded as ‘self’. It

has been submitted that since, as per the voucher/bank record, the amount in question is not deposited by 'self', the case of the petitioner that he had deposited the amount gets strengthened. Learned counsel submits that a liberal approach ought to be taken in the matter of defence evidence, as in case the petitioner is unable to establish his defence, he would face penal consequences. Learned counsel in order to hammer forth his aforesaid submissions places reliance upon a judgment of Coordinate Bench reported as Krishna Devi Shukla Vs. K.S.Oil Limited, 2023 (1) Cri. CC 691.

6. This Court has considered the aforesaid submissions.
7. The following two material questions need to be answered to address the controversy in hand:
 - (i) Whether the petitioner had raised this plea either during his statement recorded under Section 313 Cr.P.C. or had cross-examined the complainant on the said lines that he had already paid an amount of Rs.9 lakhs to the complainant, which has not been adjusted so far; and
 - (ii) Whether even if it is presumed that the body writing on the voucher with respect to deposit of Rs.9 lakhs in the account of the complainant – firm is held to have been done by the petitioner, the same would establish that it is the petitioner, who deposited the amount of Rs.9 lakhs and not the signatory, who signed on the said voucher i.e. 'Bhup', an employee of the complainant – firm.
8. While considering the first issue, as framed above, this Court finds that nothing has been shown to this Court from which it could be said that the petitioner had ever tried to build up his case on the premises that the petitioner/accused had already paid an amount of Rs.9 lakhs to the complainant – firm by way of depositing the same in the bank account and

that the complainant was not accounting for the same and was not adjusting the same towards outstanding dues.

9. As far as second issue, as framed above, is concerned, this Court is of the opinion that even if for the sake of arguments, it is accepted that the body writing of the voucher in question is in the hand of the petitioner, but given the fact that the voucher is actually signed by one ‘Bhup’, who is an employee of the complainant – firm and is not signed by the petitioner, it will indeed not be possible to hold that the amount of Rs.9 lakhs had been deposited by the petitioner, solely on the ground that the body writing is in his hand.
10. In view of the aforestated discussion, this Court does not find any infirmity in the impugned orders passed by the Courts below. The judgment relied upon by learned counsel in Krishna Devi Shukla’s case (supra) is not of much avail to the petitioner being based on distinct facts. The petition is found to be sans merit and is hereby dismissed.

31.01.2024

Vimal

(GURVINDER SINGH GILL)
JUDGE

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