

2024:PHHC:053506

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

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CRR-2323-2017(O&M)
Date of Decision : April 22, 2024

M/S AGGARWAL IRON AND MACHINERY STORE

.....Petitioner

VERSUS

M/S RAGHU PAINTS AND CHEMICALS

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Amandeep Singh, Advocate
for the respondent.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, challenge is thrown to the order dated 6.5.2017, whereby, the application under Section 391 Cr.P.C. preferred by the petitioner was dismissed. The petitioner, who was convicted vide judgment dated 6.2.2016 for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the NI Act') in a private complaint and was sentenced to undergo simple imprisonment for a period of one year. He was further directed to pay Rs.2,31,027/- to the complainant as compensation, which is the amount of the cheque in question.

2. Having aggrieved with the judgment of conviction and order of sentence (supra), the petitioner preferred a statutory appeal, which is pending adjudication before the learned Appellate Court concerned. During the pendency of the appeal, the petitioner also preferred an

application under Section 391 Cr.P.C. for bringing on record the certified copy issued by the private bank, in order to prove his innocence. The only ground, which is taken in the application, reads as under:-

“That during the proceedings of Lower Court, the appellant produced DDR No. 10 which is Ex. D 2 which was duly proved by the witness Bholu Ram ASI appeared as DW-1. Appellant was not having any knowledge about the fact that in the said DDR there was a writing mistake and in advertently it was written as cheque bearing No. 219107 while it is 229107. This fact has to come within the knowledge of appellant while he had received the copy of Judgment and Order and after careful perusal of the same. It was just a writing mistake nothing else as Axis Bank never issued cheque No. 219107 to the appellant. In this regard this Axis Bank had issued an certificate which is attached herewith.”

3. The learned Appellate Court concerned dismissed the above application on the ground that there is complete contradiction in the stand taken by the appellant. The learned Appellate Court, had recorded in DDR No.10, that the appellant has mentioned, regarding loss of cheque in question, whereas, in the complaint Ex.D6, he has mentioned that his cheque book containing blank signed cheques bearing No.229107 to 229110, 229121-229135 have been stolen by Raghbir Dayal Gupta and the DD entry was lodged on 3.4.2012, which the complainant moved to the SHO, City Rewari on 20.12.2012.

4. Learned counsel for the petitioner submits that infact the error occurred in lodging of the DDR regarding cheque number, which caused prejudice to him. Infact in DDR entry No.10, he got recorded cheque No.219135, whereas, infact the cheque number is 229135. He

further submits that this error came to the knowledge of the petitioner only after reading the judgment of conviction, therefore, this document is vital to prove his innocence and as per the certified copy by the private bank, it transpired that no such cheque book has been issued to the present petitioner containing cheque No.219135 and, therefore, there was no occasion for him to register DDR regarding cheque No.219135 apart from the other cheques but the cheque in question is 229135. He further submits that the bank has issued a certificate that no cheque book containing cheque no.229135 has ever been issued to the petitioner, which could prove that there is a typographical error in the DDR, therefore, this document should ought to have been if brought on record, could prove the innocence of the present petitioner.

5. This Court has examined the impugned order as well as the submissions made by the learned counsel for the petitioner and is unable to accept the same on the ground that the petitioner has taken self contradictory defence. First of all, in a complaint Ex.D6, he has mentioned that his cheque book containing the blank signed cheques bearing No.229107 to 229110, 229121-229135 have been stolen by Raghbir Dayal Gupta, whereas, in DDR No.10, he tried to make out a case of lost of the cheque in question. Though there may be a typographical error but considering the conflicting stands taken by the petitioner and the same would not help to prove his innocence.

6. Secondly, the application is only for placing on record the certified copy under Section 391 Cr.P.C. The petitioner has not made any

prayer for examining any witness, from the bank to prove the said certified copy, as issued by the private bank. It is not disputed by the learned counsel for the petitioner that the certified copy, as issued by the private bank is not *per-se* admissible, rather the same is required to be proved by way of evidence. In the absence of any prayer for proving such document, even if this application is allowed, such document would not be admissible as an evidence, without proving the same by the author and the person, who has issued the same, therefore, even if this application is allowed, this would be futile exercise under law. Further, this Court do not find any perversity or illegality in the impugned order passed by the learned trial Court concerned, therefore, the same is upheld and the instant petition is ordered to be **dismissed**.

7. All the pending applications, if any, stand disposed of.

(KULDEEP TIWARI)
JUDGE

April 22, 2024
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No