

CRM-M-8842-2020
CRM-M-39563 of 2022

Neutral Citation No. 2024:PHHC:000631
Neutral Citation No. 2024:PHHC:000633

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 12.12.2023
Pronounced on: 05.01.2024

1.

CRM-M-8842-2020

M/s Perfact Colour Digital Prints Pvt. Ltd.
and others

...Petitioners

Versus

Kamal Mann

...Respondent
2.

CRM-M-39563 of 2022

Ashwani Arya and another

...Petitioners

Versus

Kamal Mann and Another

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Sagar Ratusaria, Advocate for Mr. R.K. Kartikeya,
Advocate for the petitioners.

Mr. Rakesh Gupta, Advocate for the respondent.

DEEPAK GUPTA, J.
This order shall dispose of two connected petitions as above,
involving same parties.

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2.1 Perusal of the paper book reveals that Smt. Kamal Mann
(*respondent herein*) had filed complaint against accused - M/s Perfact Colour
Digital Prints Pvt. Ltd. and others (*petitioners herein*), seeking their
prosecution under Section 138 of the Negotiable Instruments Act (for short,
'the NI Act'). It was alleged in the complaint that premises of the

complainant (*respondent*) as mentioned in para-No.1 of the complaint were taken on lease, for a period of nine years, by the accused vide lease deed dated 14.10.2009 @ ₹1,70,012/- per month, calculated at the rate of ₹17.50P per sq.ft. Rent was liable to be enhanced by 6% after every year during the first six years of the lease and, thereafter, @10% in the amount of rent after every year i.e., 7th, 8th and 9th year of the lease. Accused had agreed to pay the amount of rent on or before 7th of each calendar month in advance and in case of default, complainant was entitled to charge interest @18% per annum for the delayed period. Accused had also agreed to pay requisite service tax payable. Amount of TDS was agreed to be deducted from the rent amount and said TDS was to be deposited by the accused with Income Tax Department and necessary TDS certificate was agreed to be given by the accused to the complainant. Subsequently, complainant had availed loan facility from HDFC Bank. A tri-partite agreement was executed between the accused, the bank and the complainant, whereby accused agreed to issue cheques in respect of the rent amount payable in favour of Escrow account of the complainant with the afore-said bank regularly, which was to be adjusted by the Bank against loan amount availed by the complainant.

2.2 It was further alleged in the complaint that accused paid amount of rent and also issued requisite TDS certificates for some time but then started committing defaults in the payment. He also failed to deposit the amount of TDS deducted from the amount of rent payable and to furnish the requisite TDS certificate to the complainant. As on 20.03.2016, an amount of ₹35,42,372/- towards arrears of rent, an amount of ₹4,83,536/- as arrears

of service tax, an amount of ₹8,78,530/- as interest payable by the accused on the arrears of rent for the delayed period; and an amount of ₹76,589/- as interest on the arrears of service tax became payable by the accused to the complainant. Despite various requests made by the complainant to the accused and other Directors to pay the due amount, they were postponing the matter on one or the other pretext.

2.3 It was alleged further that on 07.04.2016, accused Nos.2 and 3 being the authorised signatories / Directors of accused No.1 - company, issued a cheque bearing No.712251 dated 07.04.2016 drawn on Sector 10A, Khandsa, Gurgaon (Haryana) branch of Oriental Bank of Commerce, for an amount of ₹2,19,701/- favouring the complainant for adjustment of the amount of the cheque against the amount payable, assuring that cheque shall be encashed on presentation; and that balance outstanding amount shall be paid shortly. However, on presentation, the cheque was returned back unpaid with remarks “Insufficient Funds” vide Memo dated 04.05.2016. On the assurance given by the accused, cheque was presented twice again but both the times, it was returned unpaid with remarks “Funds Insufficient” vide Memos dated 18.05.2016 and 28.06.2016, compelling the complainant to issue a legal notice dated 25.07.2016, demanding the cheque amount to be paid within 15 days of the receipt of the notice. However, despite notice, accused failed to make the payment and so, the present complaint (Annexure P.6) was filed.

3. As it appears from the paper book, during trial, the complainant in order to support her case, relied on rent invoices Ex.C17 to Ex.C65,

copies of which have been placed on record of the paper book as Annexure P-7 (colly). These rent invoices were produced by the complainant so as to contend that from time to time, complainant has been issuing the said rent invoices for the period from April, 2012 to April, 2016 i.e., for 49 months and that authorised signatory of the accused- Company used to put stamp of the company on the invoices and put his initials thereon.

4.1 The accused moved an application dated 12.06.2019 (Annexure P.9) to allow them (accused) to get determined the age of the ink of the pen by which the alleged signatures/ initials are made and also to get determined the age of ink of the stamp allegedly of Perfact Colours Pvt. Ltd. appended on the invoices relied by the complainant.

4.2 Learned Magistrate dismissed the application vide order dated 16.10.2019 (Annexure P.2) by observing that age of the ink cannot be determined through Expert of FSL and so, there appeared to be no occasion to send the indicated age of ink of stamp allegedly of the accused- Company, to the FSL. It was further observed that in case accused wanted to disprove the invoices in question, they could do so by adducing reliable evidence, as the case was already at the stage of defence evidence.

4.3 The accused – petitioners assailed the afore-said order before this Court by filing CRR No.3288 of 2019. However, that revision petition was dismissed as withdrawn vide order dated 07.12.2019 (Annexure P.10) with liberty to approach the Court of Sessions for redressal of the grievances, as it was noticed that petitioners had the remedy to challenge the order before the Court of Sessions.

4.4 Thereafter, petitioners - accused assailed the order dated 16.10.2019 by filing revision before the Court of Sessions. Vide order dated 14.02.2020 (Annexure P.3), the Court of learned Additional Sessions Judge, Karnal dismissed the revision by observing that accused (revisionist before the Court of Sessions) did not want to compare the age of ink of the signatures/ handwriting on the cheque in question and rather, wanted to get determined the age of ink of the pen of the stamp of the firm of the accused on the invoices. It was further observed that invoices cannot be sent to the FSL to determine the age of the pen of the ink of the stamps and that accused will be at liberty to lead the evidence in accordance with law to disprove the invoices. It was further observed that there was no scientific method to determine the age of the ink of the stamp on the invoices and so, the trial Court's order was not flawed. With these observations, the revision was dismissed.

5.1 Assailing the afore-said order by way of present petition (CRM-M-8842-2020), it is contended by learned counsel that in fact, accused-Company had paid all its rent dues till December, 2014. In 2015, disputes arose between the parties, when respondent unilaterally demanded rent of ₹2,50,266/- per month. Respondent, in breach of the lease agreement, even failed to deposit the amount of service tax. So much so, Shri Nippi Mann, the son of the respondent- complainant, did not co-operate in furnishing requisite documents to get a separate electricity connection to the petitioner compelling it to purchase a DG set. Owing to such conduct, expenses worth ₹30 lacs had to be incurred by the petitioner. Subsequently, petitioners made

it clear to the respondent that further rent will be paid only after parties reach at a settlement in respect of the amount pertaining to the service tax already paid.

5.2 Learned counsel contends further that petitioner- Company was ready to settle the accounts pertaining to arrears of rent from January, 2015 to 31.08.2016 but respondent failed to furnish proof regarding payment of service tax to the government authorities for the period upto the year 2014. Several meetings took place between the parties but with no result.

5.3 It is alleged that in order to befool the petitioner and by giving false assurances for settling the matter, respondent asked the petitioners to pay four cheques, as HDFC Bank was forcing them to pay the loan. In order to prove their bonafides, petitioners gave four cheques bearing No.000969 dated 31.03.2019; No.712251 dated 07.04.2016; No.712252 dated 15.04.2016 and No.712253 dated 20.04.2016, all amounting to ₹2,19,701/- each to son of the respondent, namely, Shri Nippy Mann, who again approached petitioner No.2 and requested for giving six more cheques and petitioner No.2 in good faith gave six more cheques, all amounting to ₹2,19,701/- each. All these cheques were given on express condition that these were only for showing to the bank and will not be presented in the Bank for encashment. Shri Nippy Mann also gave an undertaking on 27.06.2016 in this regard. However, later on respondent served legal notice in first week of July, 2016 terminating the agreement and calling upon the petitioner to vacate the premises. In order to malign the reputation of the petitioner, respondent did not take possession of the vacant premises offered

by the petitioner and rather, complaint was made at CM Window. Later on, different complaints have been filed regarding dishonour of the cheques.

5.4 Learned counsel for the petitioners submits further that finding of the Courts below to the effect that there was no scientific method to determine the age of the ink of stamp of the accused-firm on rent invoices relied by the respondent, does not reflect the correct proposition of law, as age of ink can be scientifically determined, as has been held by Madras High Court in *Elumalai Vs. Subbaramani, 2012(1) R.C.R. (Civil) 59*.

5.5 Learned counsel further contends that petitioners being the accused, have every right to fair trial so as to prove their defence in order to rebut the presumption under Section 139 of the NI Act.

With these submissions, prayer is made for setting aside the impugned orders.

6. Refuting the afore-said contentions, it is argued by learned counsel for the respondent that as far as cheque in question is concerned, petitioners never disputed the signatures thereon and, therefore, presumption under Section 139 of the NI Act is available in favour of the complainant. Said fact was duly noticed by the Revisional Court. Petitioners do not want comparison of the age of ink of the signature on the cheque in question and rather, want the age of ink of the stamp and initials on the rent invoices in question, which is not required. It is also argued that numerous opportunities have already been availed by the petitioners, who have other ways to prove their defence, as has been noticed by the trial Court. Prayer is made to set aside the impugned order.

7. I have considered submissions of both the parties and perused the record.

8. Petitioners do not dispute the signatures on the cheque in question, regarding dishonor of which, the complaint under Section 138 of the NI Act has been filed. However, petitioners – accused want to rebut the presumption available to the complainant under Section 139 of the NI Act, to prove the circumstances, in which the cheques in question had been issued, as the petitioners want to prove that cheques were not issued against rent invoices as is claimed by the respondent- complainant.

9. It has been held by Hon'ble Supreme Court in *T. Nagappa v. Y.R. Mudaliar, (2008) 5 SCC 633* that when a contention is raised by the accused that complainant has misused the cheque, then even in a case where presumption can be raised under Section 118 (a) or 139 of the NI Act, opportunity must be granted to the accused for adducing evidence in rebuttal thereof. Since the law places the burden on the accused, he must be given an opportunity to discharge it. In another case titled *Kalyani Baskar Vs. M.S. Sampooram, (2007) 2 SCC 258*, it has been observed by Hon'ble Supreme Court that Court is required to afford opportunity to the accused for having a fair trial before it. Hon'ble Apex Court stressed in this case that if a disputed document would furnish the accused a good material to rebut the presumption, he should not be deprived of that opportunity.

10. In the present case, if petitioners want to rebut the presumption available to respondent – complainant under Section 139 of the NI Act, by adducing evidence regarding age of ink on the stamp of the Company,

appearing on the rent invoices relied by the respondent besides the initial of some employee of the petitioner-Company appearing on the rent invoices, the petitioners deserve to be granted that opportunity. It is immaterial that petitioners have not disputed the signatures on the cheque in question, which is the subject matter of the complaint. The significance of that evidence is to be considered at appropriate stage by the trial court, as to whether by said evidence, presumption is rebutted or not. But the accused can not be deprived of the opportunity to lead the evidence in whatever way they want, to rebut the presumption.

11. The observation made by the Courts below to the effect that age of the ink cannot be determined, is contrary to the settled preposition of law. It has been held by Madras High Court in *Elumalai's case (supra)*, after referring to several authors that it is possible to discover the age of the ink and the writing. It will be relevant to reproduce the observations made by the High Court in this regard. These read as under:-

“26.(a) The expression that there is no scientific method available anywhere in the country or State, more particularly in the Forensic Science Department for scientific assessment of the age of handwriting to offer opinion is far from acceptance. A careful survey of the above authorities would unveil a fact that settled plans of actions for experiments are very much available and when one steps into such experiments, there is further scope for upswing in the technology. It is bounden duty of the official concerned to follow the procedures. As mentioned in para 12(b) of this Shashi Kumar Banerjee's case (supra) before the trial Court, the expert had stated that the determination of the age could be ascertained definitely by a chemical test. It reveals that even prior to 1964, chemical tests were

in application to find out age of ink. Now, the science in this branch has prospered to considerable dimensions and it cannot hereafter be contended that it is not possible to ascertain the age of the ink by scientific method and exact result could not be secured. The scientists/ experts should appear before the Courts with opinionated evidence in this regard, on their successful accomplishment of this assignment.”

12. The above-said view has been fortified while allowing the prayer for determination of the age of the ink in ***T. Rajalingam Vs. State of Telangana and others, 2017(3) ALT (Crl.) 203*** by Andhra Pradesh High Court and also in ***Krishan Kumar Vs. Parkash Chand – CR No.6035 of 2015 decided on 18.05.2016*** by this High Court and also in ***Ashok Kumar Garg Vs. Bansal Poultries – CRR No.1038 of 2013 decided on 01.08.2013***, in both of which the document in question was ordered to be sent to the CFSL, Chandigarh for determination of the age of ink on it.

13. On account of the entire discussion as above, the impugned orders are hereby set aside. Present petition is accepted. Trial Court is directed to permit the petitioners - accused to get the age of the ink of the signatures as well as stamp on the rent invoices as produced by the complainant, examined by Forensic Science Laboratory, Madhuban or any other government approved laboratory.

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14. As it appears that nine different complaints were filed regarding dishonour of nine cheques. After passing of the order dated 02.03.2020 in CRM-M-8842 of 2020, whereby notice of motion was issued and the trial Court was directed to adjourn the case beyond the date fixed by this Court,

the petitioners – accused prayed to the trial Court in other eight cases to adjourn the matter, as all the complaint cases had germinated from the similar set of facts. That request was declined on the ground that there was no stay in eight other cases.

15. Prayer was made in this petition to quash the order dated 10.08.2022 (Annexure P.1) passed by learned Judicial Magistrate Ist Class, Karnal, declining the prayer to adjourn the eight complaint cases beyond the date fixed before this Court in CRM-M-8842 of 2020 and further to direct the trial Court to adjourn the complaint cases. The details of complaint cases are as under:-

- i. NACT/3525/2016: Filed on 06.12.2016;
- ii. NACT/2707/2016: Filed on 30.09.2016;
- iii. NACT/2706/2016: Filed on 30.09.2016;
- iv. NACT/2604/2016: Filed on 19.09.2016;
- v. NACT/2447/2016: Filed on 06.09.2016;
- vi. NACT/2448/2016: Filed on 06.09.2016;
- vii. NACT/0488/2017: Filed on 06.03.2017;
- viii. NACT/0021/2017: Filed on 03.01.2017;

16 Since the main petition i.e. CRM-M-8842 of 2020 has been disposed of as per the aforesaid order, therefore, present petition, i.e. CRM-M-39563 of 2022 is also hereby disposed of in the same terms.

January 05, 2024
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(DEEPAK GUPTA)
JUDGE

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

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