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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.37373 of 2024
Date of decision: 05.08.2024

Jai Kishan ... Petitioner

Vs.
Manjeet Kharb ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. S.K. Tripathi, Advocate,
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner seeking quashing of order dated 04.07.2024 passed by the Court of learned Judicial Magistrate 1st Class, Gurugram in complaint bearing CIS/NACT No.7736 of 2018 titled as *Manjeet Kharb v. Jai Kishan* whereby an application filed by him for appointment of a handwriting expert had been dismissed.
2. Brief facts relevant for the purpose of disposal of this petition are that the respondent-complainant has filed the aforementioned complaint under Section 138 of Negotiable Instrument Act (For short "Act") alleging therein that the present petitioner-accused had borrowed a friendly loan of Rs.5 lakhs in cash from the complainant on 16.04.2014 in the presence of their common friend Pradeep Kumar with promise to

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return the same within two years. To discharge his liability, he issued a post dated cheque No.008406 dated 01.04.2017 and also issued a receipt. He failed to pay the borrowed amount. The cheque was presented before the banker of the complainant for realization of the amount mentioned therein but the same had been dishonoured with the remarks “payment stopped by drawer”. Since after serving of statutory notice, the petitioner failed to pay the amount of the cheque, therefore, the respondent-complainant lodged the abovementioned complaint. Process has been issued against the petitioner and he is facing trial in the abovementioned complaint. He moved an application for appointment of a handwriting expert by pleading that the name and date on the cheque which was produced in evidence by the respondent-complainant was forged and fabricated and had not been filled by the petitioner and his signatures were obtained on a blank cheque. Prayer had been made by the petitioner to appoint a handwriting expert to show that the name and date as mentioned in the cheque is not in his handwriting.

3. As revealed from the record, the respondent-complainant filed reply (Annexure P-6) to the aforementioned application and after hearing arguments advanced by both the sides, the learned Magistrate passed the impugned order dated 04.07.2024 thereby dismissing the application.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as since the very

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inception, the defence as taken by the petitioner is that the cheque in question had been snatched from him by three persons namely, Pradeep, Banti and Rajesh after forcibly obtaining his signatures over same when it was a blank cheque and he had even filed a complaint qua the same also. It is submitted that the cheque in question was never issued to discharge any liability against the respondent-complainant as he had never borrowed any money from the respondent as alleged by him. It is further argued that even a written complaint had been filed by the petitioner at Police Station Farukh Nagar on 24.03.2017 making allegations of snatching of cheque and taking action but no action was taken by the police. It is further submitted that by bringing expert evidence on record to show, that the name and date on the cheque in question was not in the handwriting of the petitioner, the interest of justice would be met. It is argued that the learned Magistrate while dismissing the application did not apply his judicious mind. Therefore, it is argued that the impugned order being erroneous is liable to be set aside, the petition deserves to be accepted and the application so moved by the petitioner deserves to be allowed.

5. I have heard learned counsel for the petitioner and have gone through the material placed on record.

6. A perusal of Anneuxre P-5 which is copy of application as moved by the petitioner before the trial Magistrate for appointment of

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handwriting expert to verify name and date over the cheque in question (Ex.C-1) reveals, that this application was filed by him by pleading that he wanted to get handwriting expert examined regarding alleged signature over the document in question and also that the name and date on the cheque were forged and fabricated and was not in his handwriting. The learned Magistrate while passing the impugned order considered the contentions raised by the petitioner and observed that since the petitioner had not disputed his signatures on the cheque in question, therefore, the examination of handwriting expert for the purpose of showing that the date as well as writing on the cheque and receipt executed by the petitioner, were not in his handwriting would be a futile exercise. On going through the record, I am of the considered opinion that the observation so made by the learned Magistrate are well reasoned and do not warrant any interference. The petitioner has evidently and apparently not denied his signatures on the cheque in question though his claim is that the same are procured forcibly. His claim is that the date and name on the cheque were not in his handwriting. It might be so but the well settled proposition of law is that the statutory presumption under Section 139 of the Act is attracted only even when a blank cheque leaf which is proved to have been signed by the complainant in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. The allegation that this cheque was not issued to discharge a legally

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enforceable debt is to be proved by the petitioner and for that purpose, the opinion of handwriting expert is not at all required. Once the petitioner admitted his signatures on the cheque, the fact that he had not written the date and name on the cheque does not matter. As such, in the opinion of this Court, the learned Magistrate did not commit any wrong while dismissing the application as filed by the petitioner and in view of the submissions as made above, I see no reason to come to any different conclusion, Accordingly, finding no merit, the petition is dismissed.

05.08.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No