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

**Reserved on 20th of December, 2023
Pronounced on 13th March, 2024**

CRM-M No.54129 of 2023

Sandeep Kumar ....Petitioner

Versus

Moti Insecticides (P) Ltd. ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Wazir Singh, Advocate
for the petitioner.

Mr. Tejas Bansal, Advocate
for the respondent.

PANKAJ JAIN, J.

By way of present petition filed under Section 482 Cr.P.C. petitioner seeks quashing of order dated 30th of September, 2023 passed by SDJM, Safidon whereby application filed by the petitioner for sending the cheque in question to Forensic Lab CBI, Delhi for ascertaining the age of the ink of the signatures of the accused stands declined.

2. Petitioner has been summoned to face trial for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act') on the complaint filed by the respondent. The subject matter of the complaint is cheque bearing No.000020, dated 22nd of December, 2017 issued for an amount of

Rs.6,50,000/- drawn on Andhra Bank Tohana. The cheque has been returned by the banker of the accused for the reason 'funds insufficient'.

3. Petitioner moved an application claiming that he never issued alleged cheque in favour of the complainant. Complainant has misused blank cheque and the same can be analysed after ascertaining the age of the ink of the signatures on the cheque and the ink of the other filled details i.e. the date, amount etc. He thus prayed that the cheque be sent to forensic lab to ascertain the age of the ink.

4. Application was dismissed by the Trial Court after holding that the petitioner/accused has been shifting his stance. During cross examination of the complainant/witness, suggestion was given that the disputed cheque does not bear the signatures of accused Sandeep. Thereafter, suggestion was given to the witness that the cheque in question was issued by firm Kanheri Pesticides for part payment. Thus, the Court found that sending of the cheque to the forensic lab was irrelevant especially when the signatures on the cheque leaf is admitted in plea of defence.

5. Counsel for the petitioner has assailed the order relying upon various precedents claiming that even if the signatures on the cheque are admitted, the petitioner cannot be denied opportunity to rebut. Reliance is being placed upon law laid down in the case of **T. Nagappa vs. Y.R. Muralidhar, (2008) 5 SCC 633**, **Baburao Madhavrao Munnemanik vs. Vishwajit Pratapsing Pardesh and another, 2011(4) R.C.R.(Civil) 154**, **Rajesh Rana vs. Parmod Kumar, 2022(4) R.C.R.(Criminal) 381** and

Balwinder Singh vs. M/s. Aggarwal Finance – CRM-M No.37322 of 2022 *decided on* **28th of September, 2022.**

6. There is no denial to the proposition canvassed in the aforesaid precedents. The accused has a right to defence and the doors cannot be closed upon him to read the evidence even when the defence evidence has been closed. For the relevant piece of evidence, the Court can always resort to Section 311 of the Code.

7. Plea of defence of the accused in the present case reads as under:

> "Q1. It has been alleged that you in order to discharge your existing liability as mentioned in the complaint, had issued cheque Ex.C4 in favour of complainant which on presentation received bank dishonoured by the banker with the remarks "Funds Insufficient" vide bank return memos Ex.C5 What you have to say in this regard?
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> Ans. I had obtained on account of said purchase on 22.12.2017 a sum of Rs.6,59,391.30/- was due against accused. I have not issued any cheque in favour of complainant bank. Cheque Ex.C4 bears my signatures, however the bank had obtained blank signed cheque at the time of sanctioning of loan."

8. In reply to the application filed under Section 143-A of the N.I. Act, the accused pleaded as under:

> "1. That the accused have no liability toward the complaint. There had been business transaction between the complainant and the accused. The accused used to purchase pesticides etc from the complainant and the complainant as surety had taken some blank cheque from the accused now have misused one such blank cheque.

> 2. That the accused have paid the outstanding of the purchased pesticides etc to the complainant which were supplied to the accused on his order in good condition but some of the order of pesticides etc were not executed as per order and the complainant supplied defected and duplicate pesticides etc to the accused which was duly informed to the complainant and the accused had also requested to the complainant for replacing the same but the accused have not replaced those defected and duplicate pesticide so supplied to the accused whereas an investigation of the duplicate and defective pesticide are still under process on the complaint of the accused. The accused will proved these facts at the time of the evidence.
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> 3. That in these circumstances there is no legally recoverable debt towards the accused and the complainant is not entitled to any interim compensation."

9. The question thus is: '*once the signatures on the cheque have been admitted by the accused in his plea of defence, can the age of ink rebut the statutory presumption to lead relevance to the evidence sought to be led invoking Section 311 of the Code?*'

10. Answer to the aforesaid question has been given by the Apex Court in **Oriental Bank of Commerce vs. Prabodh Kumar Tewari, 2022(3) PLR 790** in the following terms:

> "15. A drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The presumption arises under Section 139.
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> 16. In ***Anss Rajashekar v. Augustus Jeba Ananth, (2020) 15 SCC 348*** a two Judge Bench of this Court, of which one of us (D.Y. Chandrachud J.) was a part, reiterated the decision of the three-Judge Bench of this Court in ***Rangappa v. Sri Mohan (2010)***

11 SCC 441 on the presumption under section 139 of the NI Act. The court held:

> 12. Section 139 of the Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it, in discharge, in whole or in part, of a debt, or liability. The expression "unless the contrary is proved" indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a "reverse onus clause" the three-Judge Bench of this Court in Rangappa held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination. The standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities. This Court held thus:
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> > "28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."
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> (emphasis supplied)

17. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a

> hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.
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> 18. Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability."

11. In view of the aforesaid stated proposition of law, this Court does not find any reason to interfere in the impugned order. Resultantly, the present petition is dismissed.

March 13, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No