IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

121 **CRM-A-313-2021**
Decided on: 11.02.2025

Naresh Kumar **......Appellant**

Versus

Pawan Kumar

......Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Govind Chauhan, Advocate for the applicant.

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SANJAY VASHISTH, J.

1. Challenging the dismissal of the complaint filed under Section 138 and 142 of Negotiable Instruments Act, 1881, the complainant had come up before this Court by filing present application under Section 378(4) of Cr.P.C., 1973 seeking leave to appeal.

2. Learned counsel for the applicant *inter alia* contends that applicant (proposed appellant) and respondent-Pawan Kumar were running a partnership firm in the name of M/s Saini Agriculture Works, Gali No.-14, Basant Vihar, Karnal vide partnership deed dated 22.09.2016

3. From the said partnership firm, one of the partner namely, Naresh Kumar-Applicant herein resigned and resultantly both the partners prepared a dissolution deed dated 23.10.2017. As per clause 3 of the said dissolution deed, a post dated cheque bearing No.102344 dated 22.01.2018 for Rs.4,19,000/- of Union Bank of India, Main Branch Karnal, IFSC Code No. UBIN0537993 was handed over by respondent to applicant as a continuing partner in the firm.

4. On dishonor of the cheque, a complaint under Section 138 of Negotiable Instruments Act, 1881, filed by the applicant was dismissed by observing that "*as per the defence taken by accused amount mentioned in the cheque is '9000' and numeric '41' has been prefixed with'9000'.* Learned Trial court has already given its observation that on perusal of the cheque in question it reveals the insertion of numeric '41', because ink used at the time of writing '41' is different to the ink used for writing '9000'.

5. Noticing Section 87 of the Negotiable Instruments Act, 1881 trial court held that any such alteration is to be viewed against the party who basis the claim over the alteration made therein. Relevant part of observations made by learned trial Court is reproduced herebelow:

> *"In the present case, main defence of the accused is regarding insertion of numeric "41" before "9000" on cheque in dispute. Perusal of cheque in dispute reveals that figure "41" has been inserted because ink used at the time of writing "41" in different and in writing "9000" is different and complainant did not give any satisfactory reply to this fact, which raises serious doubt in the case of complainant. In cases under section 138 of NI Act, prime requirement to prove is cheque and when cheque presents before concerned bank and if same gets dishonoured then section 138 of NI Act attracts. In the present case, cheque in dispute itself is doubtful because complainant failed to prove that how figure "41" inserted before "9000" with different pen.*
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> *The main species of forgery is signing the name of existing person or insertions of any digit in cheque.*
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> *As per Section 87 of the NI Act which talks about fact of material alteration- any material alteration of Negotiable Instruments renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out common intention of original parties.*
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> *It is general rule of law that a material alteration of a document by a party to it or while in the custody of a party after its execution without the consent of the other party, renders it void. The rule is based on sound policy*

and may be defended on two grounds, firstly, that no men shall be permitted to take chance of committing a fraud without running any risk of loss by the event when it is detected and secondly, that by the alteration, the identity of the instrument is destroyed, and to hold one of the parties liable under such circumstances would be to make for him, a contract to which he never agreed. Same fact has been held in Gour Chandra vs. Prasanna Kumar (1906) ILR 33, Cal. 812, 816.

An alteration is material which in any way alters operation of the instrument of liability of the parties, whether the changes is prejudicial or beneficial. Any alteration is material that alters the business effect of the instrument use for any business purpose. So any alteration which changes the legal identity or the character of the instruments in its terms or the relations of the parties to it, is material alteration and in the present case, alteration in cheque in dispute considers that major alteration as amount has been altered in cheque in dispute and insertions of numeric "41" did not form part of the documents. If alteration is made with the consent of the parties, instrument is binding on them and complainant has failed to establish its version that the accused has issued cheque in dispute in his favour in discharge of his legally enforceable liability and accused has succeeded in raising probable defence in his favour by rebutting presumption under section 139 and 118(a) of the NI Act. So, in view of the aforesaid discussion, complainant failed to prove his complaint as cheque in dispute is itself is doubtful.

18. Upshot of the foregoing discussion is that complainant has failed to establish on record that instrument of "41" before "9000" is bonafide. Complainant has failed to establish the legally financial liability of the accused towards him. As such, the present complaint is hereby dismissed and accused present in the court is hereby acquitted of the accusation levelled against him. His bail bonds and surety bonds stands discharged. Fresh personal bonds as per the provision of Section 437A of Cr. P.C. are obtained from the accused which would remain in force for six months to secure his presence before the learned Appellate Court if need be, if any appeal against this judgment is preferred by the complainant. File be consigned to the Record Room after due compliance."

6. There appears to be no perversity in the impugned judgment dated 23.01.2020, nor the counsel has pointed out the same during the course of arguments. The main submission addressed by the counsel for the applicant is that the right of complainant(applicant herein) accrues from

the dissolution deed, wherein the amount has already been mentioned, however, he is unable to counter the observations made by learned trial Court in reference to Section 87 of the Negotiable Instruments Act, 1881 and also the finding given to the fact that the ink used to prefix numeric '41' is different to the ink used in writing '9000'. Even, this clarification does not appear to be there in the dissolution deed dated 23.10.2017, thus, arguments addressed is beyond the facts which are part of the dissolution deed and same cannot be accepted as per choice of the complainant. Moreover, complainant/applicant failed to prove the cheque having been issued to discharge the legally enforceable liability. Accordingly, the application for seeking leave to appeal is hereby dismissed.

11.02.2025 **(SANJAY VASHISTH)**
rashmi **JUDGE**

Whether Speaking/Reasoned: **YES/~~NO~~**
Whether Reportable: **~~YES~~/NO**