S.No.130

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CRM-M-30633 of 2019 (O&M)
Date of Decision:19.07.2019

Sukhjinder Singh **.....Petitioner**

Vs.

Buta Singh **.....Respondent**

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. H.S. Bhullar, Advocate
for the petitioner.

****

Rajbir Sehrawat, J.(Oral)

This is a petition challenging the order dated 29.01.2019 passed by Judicial Magistrate Ist Class, Faridkot; dismissing the application of the petitioner/ accused for taking his own specimen handwriting for comparison of the same with the writing on the body of the cheque involved the complaint; and the order dated 02.07.2019 (Annexure P-4) passed by Additional Sessions Judge Faridkot, thereby dismissing the revision petition against the above said order of the trial Court.

The facts giving rise to the present petition are that the petitioner had given a cheque to the complainant; which the complainant claims to be received in discharge of enforceable liability of the petitioner. The said cheque was defaulted in payment. Therefore, the complainant had preferred a complaint against the petitioner under Section 138 of NI Act The complainant completed his evidence. At the stage of starting of the defence evidence, the petitioner/ accused has taken a plea that the cheque in question, though undisputedly signed by him, however, was not `drawn' by him; because he had not filled up the body of the cheque. To prove this fact, the petitioner/ accused moved an application before the trial Court for sending his sample handwriting to the expert for comparison of the same

with the writing found in the body of the cheque. That application was declined by the trial Court vide the abovesaid order dated 29.01.2019.

Aggrieved against the order of the trial court, the petitioner/ accused preferred the revision petition before the Court of Additional Sessions Judge, Faridkot. However, the same was also declined by the Additional Sessions Judge; vide order dated 02.07.2019. While dismissing the revision petition, the Revisional Court observed that the accused want to plead that it is not he, who filled up the body of the cheque; rather it is the complainant who filled up the cheque. However, the complainant has not even claimed in the complaint that the accused filled up the cheque. Rather it is the positive case of the complainant that when the cheque was sought to be handed over to the complainant, at that time, the body of the cheque was already filled up, however, the signature of the accused/ petitioner was not there. Therefore, the petitioner/accused was asked to put his signatures; so as to complete the cheque. Accordingly, the petitioner/ accused put the signatures on the cheque in the presence of the complainant and, thereafter, handed over the same to him. Still further, it was observed by the trial Court that signatures on the cheque are not even disputed by the petitioner. Accordingly, the Revisional Court held that even as per the law, it is not necessary that body of the cheque in question must have been filled by the accused/drawer himself. The body of the cheque could have been filed up by anybody. Therefore, this fact is; otherwise also; irrelevant.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner/ accused has taken a plea that he has not drawn the cheque. Drawing of the cheque means completing all parts of the cheque by the petitioner/drawer himself. The petitioner could have filled up

the cheque himself or it should be filled up in his presence or with his consent. It is further submitted that since the accused/ petitioner is leading evidence in his defence, therefore, it is for the petitioner to chose the mode of proof of a fact. Since the petitioner is to rebut the presumption, therefore he can prove that he had not `drawn' the cheque. Hence, the Courts below should have allowed the application and thereby, should have permitted the comparison of writing on the body of the cheque with the handwriting of the petitioner. To support his contention, that cheque cannot be taken as `drawn' by the accused if it is not filled up by him, counsel for the petitioner has relied upon judgment of Orissa High Court in **M/s Surveka Distributors Pvt. Ltd and others v. M/s S.R. Retail Zone Pvt. Ltd., 2018 (5) R.C.R. (Criminal) 317** and a judgment of Kerala High Court in **C. Santhi v. Mary Sherly, 2011(4) R.C.R. (Criminal) 94**.

Having heard learned counsel for the petitioner and having perused the file, this Court does not find substance in the argument of the learned counsel for the petitioner. In the present case, the petitioner has not even disputed his signatures on the cheque. Therefore, the only attempt which is being made by the petitioner is that he wants to prove the non-existence of the consent of the petitioner qua drawing of the cheque by asserting the fact that body of the cheque was not filled up by the petitioner/ accused. However, it is not even disputed by the petitioner that the cheque which is on the Court file is complete in all respects, containing all the necessary particulars meant for a cheque. Therefore, in considered opinion of this Court, even if the Court would have acceded to the request of the petitioner and sent the cheque for comparison of the handwriting of the petitioner; and in an extreme case, even if the report would have come to

the effect that the body of the cheque is not filled up by the petitioner; still it would not have proved the fact that the cheque was not issued or drawn by the petitioner or with his consent. It is nowhere provided under any law that a cheque would be a valid instrument only if all parts of the same are filled up by the drawer or the holder of the account himself or in his own handwriting. The petitioner could have, very well, got it filled up from anybody at his choice. Therefore, the fact that the body of the cheque might have been in a handwriting different than the signatures of the petitioner is totally irrelevant; for the purpose of offence under Section 138 of NI Act. For proving offence under Section 138 of NI Act against an accused, the complainant is not required by law to prove that body of cheque was filled up by the accused himself or even with his consent. Therefore, any report qua writing in the body of the cheque would not have rebutted any `presumption', as claimed by the accused/ petitioner.

Even otherwise, the provisions of Negotiable Instruments Act do not contemplate the fact that body of the cheque should be filled up by the drawer of the cheque himself. Rather, the provisions speak only qua the signatures of the drawer being present on the cheque/bill of exchange. It is appropriate to have reference to provisions of the Act in this regard. Sections 5 and 6 of the Negotiable Instruments Act, 1881 read as under:-

> "**5. "Bill of exchange".-** A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.
>
> A promise or order to pay is not "conditional", within the

meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only.

6. "Cheque".- A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation 1.- For the purpose of this section, the expressions--

(a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto

system or with electronic signature, as the case may be;]

(b) "a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II.--For the purpose of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.]

[Explanation III.--For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000 (21 of 2000).]

A bare perusal of the above provisions show that every cheque is a bill of exchange of a particular kind. Section 6 of the Act also prescribes that the `cheque' can be in electronic form as well. However, while extending the scope of the definition of the cheque to the digital format, the Act has again emphasised upon the `signature' of the drawer, though in the digital form. Therefore, if the argument that the body of the cheque should have been filled up by or in the handwriting of the drawer only; to make it a validly drawn cheque; is taken to the logical end, then it goes against the provisions of the Negotiable Instruments Act itself. In that situation, there cannot be any `cheque' in the electronic form;

because it would not contain any handwriting of the drawer, nor the signature in physical form. Same is the tone and tenure of the definition of the `Bill of Exchange' as contemplated by Section 5 of the Act. While defining Bill of Exchange, which every cheque is, this Section has also emphasised only upon the fact that the same is signed by the maker of the Bill of Exchange. A bare reading of Section 5 of the Act also shows that the only thing which is insisted by this Section for validity of bill of exchange is the `signatures' of the maker of the bill. Everything else has been left to be defined by the variable facts and circumstances of the case. Hence, this Court is of the opinion that the fact that the body of the cheque is not filled up by the drawer of the cheque, is totally immaterial in a trial for offence under Section 138 of NI Act. Once the cheque is a complete document, containing all the particulars, as required by the Negotiable InstrumentsAct, and the same bears undisputed signature of the drawer of the cheque, then, the cheque would be a valid document under Negotiable Instrument Act, irrespective of the fact as to who has filled up the body of the cheque. This strand of intention of legislature can be very well gathered from the other provisions of the Act as well. Wherever the Act talks of liabilities on the basis of Negotiable Instruments, it has emphasised only on the fact that the drawer or indorser has signed the document. Not only that, the Act goes to the extent of recognising the `indorsement in blank' and presuming the authority; with the holder in due course; to fill up the amounts therein. The definite provisions to this effect are contained in Section 13, Section 16 and Section 20 of the Negotiable Instruments Act. Still further, Section 89 recognises the negotiable instrument as a valid instrument despite the alteration thereon, if the alteration is not apparent on the face of it. This

would also show that the Act is emphasising in favour of the validity of the instrument if it is `signed' by the drawer, maker or indorser. Moving a step further, Section 120 of the Act, creates an estoppel against the drawer of the cheque or maker of a promissory note or bill of exchange; by denying him the right to question the validity of the instrument as originally made or drawn. Therefore, there is no statutory or jurisprudential basis to hold that unless the body of the cheque is filled up by the drawer himself, the cheque would not be taken as having been validly `drawn' by him. Once the signatures are not denied then it contains an in-built presumption that all the material particulars have been filled up either by the drawer or with his authorisation, unless the drawer proves it otherwise, by leading some other independent evidence.

As mentioned above, the fact that body of the cheque was filled up in handwriting other than that of the drawer of the cheque; is not any proof of the fact that the consent of the drawer; in drawing such a cheque; was missing. If this is permitted then the drawer of the cheque can frustrate the provisions of Negotiable Instruments Act in; virtually; every case. He can get the cheque prepared as per his choice from some other person and can subsequently start pleading that he had not filled up the body of the cheque or that he had not consented to the filling of the body of the cheque. In such a situation, the payee or the holder in due course would have no means to prove his consent. Otherwise also, since the cheque is not a document which is required to be attested by witnesses for being a valid document, therefore, the complainant is under no legal obligation to examine a witness to prove the due execution of the same. On the contrary, if the drawer of the cheque takes a plea that his consent qua drawing of the

cheque was missing, then it is, exclusively; for the drawer to prove the fact that he had not consented to the filling of the body of the cheque.

Although the counsel for the petitioner has relied upon a judgment of Orissa High Court in case **M/s Surveka Distributors Pvt. Ltd. and others v. M/s S.R. Retail Zone Pvt Ltd., 2018(5) R.C.R. (Criminal) 317** and a judgment of Kerala High Court in case **C. Santhi v. Mary Sherly, 2011(4) R.C.R. (Criminal) 94**. However, this Court finds the said judgments to be distinguishable on the facts of these cases. In case of **M/s Surveka Distributors Pvt. Ltd. (supra)**, it is clear that the accused in that case has taken a plea that he was having regular business dealings with the complainant and he had given the un-filled cheque in good faith to the complainant. Therefore, to establish his plea of good faith in handing over blank cheque to the complainant of that case, the accused had prayed for comparison of signatures of the `complainant' on the said cheque. In the present case, the accused/ petitioner is not seeking the comparison of handwriting of the complainant, rather, he is seeking comparison of his own handwriting, in a virtual attempt to say that it is not he who filled up the body of the cheque, whereas anybody else may have done it. However, as mentioned above, this is not any defence for the accused in a case under Section 138 of Negotiable Instruments Act. So far as the judgment of the Kerala High Court in **C. Santhi's case (supra)** is concerned, this Court is in respectful partial disagreement with the said judgment. This Court finds that as per the statutory provisions the word `drawn' is not defined by the Act. Even the definition of the cheque is such which may not even require any handwriting of the drawer of the cheque. It can be even any digital format requiring only digital `signature'. All the provisions of Negotiable

Instruments Act only require signatures of the drawer on such instrument for making it a valid tender. Therefore, as observed above, once the signatures are not disputed; then the cheque has to be taken to have been drawn by the drawer himself, however, subject to the other defences which the drawer may be able to take; in accordance with law.

This Court also finds that the trial Court has rightly recorded that it is not even the case of the complainant that the cheque was filled up by the petitioner/ accused in his presence. Rather, it is the case of the complainant that the body of the cheque was already filled up and the petitioner only put his signatures in his presence. Therefore, getting compared the handwriting for the purpose of a fact; which is not even claimed by the complainant; would have been a useless exercise. Hence, this Court does not find any illegality or perversity in the order passed by the Courts below.

Even otherwise, the petitioner has already availed his remedy of revision against the order passed by the trial Court. The second revision by the same party is expressly barred under Section 397(3) Cr.P.C. Since in the present case also, the petitioner has tried to reck up the issue of `legality' or `propriety' of the orders passed by the Courts, therefore, the present petition is nothing but a second revision; in the garb of petition filed under Section 482 Cr.P.C. However, a person cannot be permitted to do indirectly what he cannot do directly. This proposition of law has already been considered and decided by this Court in **CRM-M-30350 of 2018 – Sudesh and others v. State of Haryana and another,** **as under:**

> "So far as the present petition is concerned, this petition has been filed for invoking power of the High Court under

Section 482 Cr.P.C. A bare perusal of Section 482 Cr.P.C shows that the power under Section 482 Cr.P.C can be invoked for three purposes, namely, for giving effect to the orders passed under this Court, for preventing the abuse of the process of the Court and to meet the ends of justice. In the present case, the prayer of the petitioners is not for giving any effect to any order passed by the Court. Therefore, the first eventuality prescribed under Section 482 Cr.P.C is not at all attracted. Still further, by any means, an order passed by a Court of competent jurisdiction and continuation thereof; cannot be branded as an abuse of the process of Court; unless it is alleged and shown to the High Court that the Courts below had acted for irrelevant reasons or for extraneous considerations. Needless to say that sufficiency of reasons is not to be gone into after the revisional Court. It is not even the allegation of the petitioners in this case that orders are passed by Court below; for irrelevant or extraneous considerations. So far as the third ingredient of Section 482 Cr.P.C is concerned, this Court is not supposed to go into `legality' and `propriety' of the order passed by the trial Court. Section 397(3) of Cr.P.C prohibits second revision by a party. Under Section 397(1), the Revisional Court is authorised to see `legality' and `propriety' of the order passed by the Court. Since second revision by the same party is prohibited under Section 397(3), therefore, any argument on `legality' or

> `propriety' of an order passed by the Court below, ordinarily, is not to be appreciated in proceedings under Section 482 Cr.P.C, unless it is shown, at the macro level, that such an order has resulted from considerations which were totally alien to the process of the Court or have produced incomprehensibly absurd result and, therefore, have resulted in defeating the ends of justice itself. What cannot be done directly, cannot be done indirectly as well. In the present case, except to argue for re-appreciation of the material before the trial Court, there is not even a submission or an allegation regarding any aberration in the process adopted by the Courts for passing the impugned orders. Therefore, power under Section 482 Cr.P.C cannot be exercised by this Court to re-appreciate the same material, which was available before the Courts below and which have been duly appreciated by the Courts below."

In the present case, much less to speak of any process alien to law being adopted by the Courts below, as stated above, this Court does not find even any illegality or perversity in the orders passed by the Courts below. Hence, the present petition is, otherwise also, not maintainable.

Dismissed.

July 19, 2019 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No