

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Misc. Criminal Case No.12242/2016****Nicky Chaurasia****-Vs-****Vimal Kumar**

Shri Vijay S. Chauhan, counsel for the applicant.

Shri H.K. Shukla, counsel for the respondent.

ORDER
(18/11/2016)

1. This petition under Section 482 of Cr.P.C. has been filed against the order dated 26.9.2016 passed by the Court of II Additional Sessions Judge, Ashok Nagar in Criminal Revision No.25/2016 arising out of order dated 2.7.2016 passed by J.M.F.C., Ashok Nagar in Criminal Case No.2484/2014.
2. The necessary facts for the disposal of the present petition in short are that the respondent has filed a complaint under Section 138 of Negotiable Instruments Act (for short 'NI Act') alleging that he and the applicant/accused are in the same business and, therefore, known to each other. The applicant had demanded Rs.3 lacs from the respondent to meet his domestic requirements and when the respondent/complainant demanded his money back, the applicant gave him a cheque on 22.08.2014 by signing the same and he had also requested the respondent not to present the cheque immediately and he should

present the cheque after two or three days. On 26.9.2014, the cheque was presented which was returned unpaid on 26.9.2014 itself with a note that the account does not have sufficient funds. A statutory notice was given and thereafter the complaint under Section 138 of NI Act was filed.

3. After the complainant examined all his witnesses and the statement of the applicant was recorded under Section 313 of CrPC., the applicant filed an application for sending the cheque in dispute to a handwriting expert on the allegation that the cheque in dispute does not bear his signature as well as the other contents are also not in his handwriting.

4. The trial court after considering the fact that, in his statement under Section 313 of CrPC, the applicant/accused has admitted that the cheque in dispute bears his signature, rejected the application and held that once the accused has admitted his signature on the cheque in dispute then the cheque is not required to be send to the handwriting expert to find out that in whose handwriting the remaining contents are.

5. Being aggrieved by the order of the trial court, the applicant filed a criminal revision too which has been dismissed by the revisional court by order dated 26.9.2016.

6. Heard the learned counsel for the parties.

7. In statement under Section 313 of CrPC, in reply to question No.5, the applicant has admitted that he had signed the cheque No.759479 and he had given the same to the complainant. In reply to question No.7, the applicant has admitted that he had given the disputed cheque to the complainant. He has further admitted in reply to question No.8 that he had received the registered notice sent by the complainant. Thus, it is clear that the applicant had not

denied his signature on the cheque in dispute.

8. In the case of **Vipin Kumar Vimal Kumar H.U.F. Vs. Shobhit Kumar @ Mintu Samaiya** (M.Cr.C.No.8893/2015), a Coordinate Bench of this Court by order dated 26.8.2015 held as under:-

“12. On the basis of the aforesaid discussion, it would be apparent that Magistrate did not consider that fact that none of the cheque was returned by the bank on the ground that signature found on the cheque does not match with the specimen signatures kept in the bank and therefore, prima facie there was no need to refer any of the cheque to the hand-writing expert for verification of the signature of the respondent. So far as ink etc. found on the remaining text of the cheque is concerned, it could be in the hand-writing of a particular person then, without taking any specimen of that hand-writing, expert cannot say anything about that hand-writing. At the most, it can be said that remaining text of the cheque was not in the hand-writing of the respondent. However, it is admitted by the parties that remaining text of the cheque is not required to be in the hand-writing of the respondent. In this context, the order passed by the single Bench of this Court in case of Satyendra Upadhyay (supra) and Bhadauriya Tiles (supra) may be referred, in which it is held that when it is found that signature on the cheque was of the accused then, there is no need to refer the cheque to the hand-writing expert for remaining text of the cheque because of various presumptions given in the provision of NI Act like Section 20. Hence, the application filed by the respondent was not acceptable. It was filed only to cause delay otherwise, after getting a report from one hand-writing expert, again the cheques are to be referred to another hand-writing expert of the choice of the complainant and a conflict in the opinions of two hand-writing experts will not give any clear cut result to the Court. By acceptance of such application, only delay would be caused in the trial.”

9. Section 20 of NI Act reads as under:-

“20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

10. Thus, it is clear that where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments which is either wholly blank or having written thereon an incomplete negotiable instrument then he thereby gives prima-facie authority to the holder to complete an incomplete negotiable instrument.

11. It is well established principle of law that an accused has a right of fair trial. He has a right to defend himself as a human as well as it is his fundamental right. The applicant has taken a defence that there was a loan transaction between the applicant and the complainant but stated that he had taken a loan of Rs.1 lacs and he has returned the same. Whether, this defence is plausible or not, is a matter which is to be considered by the trial court.

12. However, once the applicant/accused has admitted his signatures on the cheque in dispute and has also admitted that he had given the same to the applicant, then a presumption can be drawn under Section 20 of NI Act.

13. Thus, in the facts and circumstances of the case, this Court is of the opinion that the trial court has not committed any error in rejecting the application filed by the complainant for sending the cheque in dispute to the handwriting expert.

14. Accordingly, the present petition is dismissed without any costs.

(G.S. AHLUWALIA)
Judge
(18.11.2016)

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