

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.799/2014

1 **Rajendra Mundra**
S/o Shri Kalyanmalji,
Age 60 years, Occ.-Business
R/o 111 Vyanktesh Nagar, Indore
..... Applicant

Vs.

1 **Kailash Jain,**
S/o Shri Laxminarayan Jain
Age 54 years, Occ.- Business,
R/o 30 Shubham Complex, Chhota
Bangdada, Indore
..... Respondent

Shri Manohar Dalal, learned counsel for the applicant.
Shri Nilesh Dave, learned counsel for the respondent.

ORDER

(Passed on 08/12/2014)

Per Alok Verma, J.

This application under section 482 of Cr.P.C. is directed against the order passed by the learned Judicial Magistrate First Class in Criminal Complaint Case No.6477/2011 dated 17.12.2013 and order passed by the learned Additional Sessions Judge in Criminal Revision No.06/2014 dated 17.01.2014.

2. The facts relevant for disposal of this application are that the respondent filed a complaint under section 138 Negotiable Instrument Act against the present applicant on the

dishonor of two cheques allegedly issued by the present applicant in favour of the respondent for the total sum amounting to Rs.6,00,000/-. At the stage of defence evidence, an application was filed by the present applicant for examination of the disputed cheques by the handwriting expert and also calling witness Pappu Patodi as defence witness. It is alleged by the present applicant that the respondent was working as an employee in his establishment. As a business practice, blank cheques with signature of the present applicant were given to third party as a security for the amount that due against them. One such cheque was returned by the third party Pappu Patodi S/o Ratan Patodi. The cheque was returned back to the respondent who misused the cheque and had returned his own name and other writing on the cheque and filed the present complaint committing fraud and mischief.

3. The learned Judicial Magistrate by the impugned order dismissed the application on the ground that no question was asked during the cross-examination of the complainant Kailash Jain in respect of writing on the cheques. No suggestion was given to him during cross-examination. The signatures were admitted by the present applicant and nowhere it is mentioned that he wanted to prove that remaining entries on the cheque were filled by somebody else. The Revisional Court in his order dated 17.01.2014 observed that once signature on the cheque is admitted then inference can be drawn that the cheque was issued validly by the person signing the cheque. Even if remaining entries were filled up by

some other person the presumption shall be drawn that cheque was issued by the person by whom the cheque was purported to have been signed. If the present applicant wanted to prove that cheque was issued for some other transaction then he could have adduce evidence for this purpose. The learned Revisional Court deserved that the application was filed only to cause delay and, therefore, he dismissed the revision and the order passed by the learned Judicial Magistrate was confirmed.

4. Against this, the present applicant placed reliance on judgment of **Hon'ble Supreme Court in G.Someshwar Rao Vs. Samineni Nageshwar Rao (2009) 14 SCC 677**. It was observed therein by the Hon'ble Apex Court that right of the accused to lead evidence in his defence is not absolute such right has to be used only for furthering the cause of justice but not subverting it. The Hon'ble Court observed that it shows the intention of accused to delay disposal of the matter. However, the Hon'ble Court granted opportunity to examine expert at the cost of the appellant. The second judgment of Hon'ble Supreme Court relied on by the present applicant is **T.Nagappa Vs. Y.R. Muralidhar (2008) 5 SCC 633**. The facts of this case were similar to the facts of the present case. The contention of the appellant in that case was that in the year 1999, he handed over the cheque as security for a hand loan of Rs.50,000/- and instead of returning the cheque, the person to whom the cheque was handed over as a security misused the cheque by entering a huge amount which was not

owned by the appellant to that person. The prayer was to examining the handwriting expert to determine the age of the signature on the cheques as the remaining entries were in different handwritings. The Hon'ble Court observed that in para 12 of the judgment that : -

12. However, it is not necessary to have any expert opinion on the question other than the following:

“Whether the writing appearing in the said cheque on the front page is written on the same day and time when the said cheque was signed as 'T. Nagappa' on the front page as well as on the reverse, or in other words, whether the age of the writing on Ext. P-2 on the front page is the same as that of the signature 'T. Nagappa' appearing on the front as well as on the reverse of the cheque, Ext. P-2 ?”

5. For that limited purpose, examination of the cheque was allowed by the Hon'ble Court. As against this the respondent cited the judgment of Hon'ble **Punjab and Hariyana High Court** in **Darshan Lal Vs. Arjun Singh**, in which the examination of the cheque by the handwriting expert was not found necessary.

6. Reverting back to the present case, here also the case of the present applicant is that the writing on the cheque is different then that of his own. According to him, the remaining entries on the cheque were filled subsequently and in this case also the age of the signature and age of the remaining entries are crucial to decide whether the averments by the present applicant are true or false. This apart the main

objection of the respondent was that in the reply of the notice given by the present applicant such plea was taken that the other entries on the cheque were filled by the respondent. However, going through the averments in para 2 and 3 of the reply which is filed as Annexure A/4 with the present application, it is clear that according to the present applicant the cheques were blank when they were signed by the present applicant and the remaining entries were filled subsequently in a different handwriting allegedly by the respondent.

7. Taking all the facts and circumstances of the case into consideration, the present application deserves to be allowed and is accordingly allowed. The impugned orders are set aside. It is directed that the cheque may be sent for examination by the handwriting expert at the cost of the present applicant to answer the query whether the writing appear in the said cheque on the front page is written on the same day and time when the said cheque was signed on the front page, in other words whether the age of the writing on the cheque on the front page is same as of the signature of the present applicant. Also the applicant is allowed to examine the said person Pappu Patodi S/o Ratan Patodi as defence witness.

8. With this direction and observation, this application is allowed.

**(ALOK VERMA)
JUDGE**