

evidence on the record that what amount has been given as loan and whether any interest etc. was to be paid or not. There is also no document on the record to show the liability. There is also no document on the record to show the capacity of the complainant to lend such a huge amount. There is also no evidence on record that such a huge amount was withdrawn from the bank. Further, this loan amount is not paid through negotiable instrument. As per provisions of the Income-Tax Act, such a huge amount cannot be paid in cash. The version of the complainant is that he borrowed only Rs.25,000/- from the complainant about four years back and his signatures were obtained on blank stamp papers. The accused/petitioner has also taken the defence that one Reaper was purchased by the complainant and that amount of Rs.25,000/- was to be deducted from that amount.

8. The learned Sub Divisional Judicial Magistrate, Balachaur, convicted the revision petitioner only on the ground that the accused/petitioner has admitted the borrowing of Rs.25,000/-. The lower Court has not properly appreciated the evidence on the record. In the absence of any evidence produced by the complainant or in the absence of any averment made in the complaint, the complainant has failed to prove the liability of the accused/petitioner regarding the cheque in question. It is for the complainant to show that the cheque was issued for legally enforceable debt. The presumption under Section 139 of the NI Act has been rebutted by the accused from the evidence of the complainant itself as there is nothing to show that any amount had been given by the complainant to the accused and there being no document showing that any amount was paid to the accused/petitioner and there being no particulars regarding loan amount, source of the amount, I find that a reasonable doubt exists in the prosecution case and the Courts below have ignored all these facts and convicted the accused/petitioner. The findings of the Courts below are not as per law and the same are liable to be set aside.

9. Finding merit in the criminal revision petition, the same is accepted. The petitioner is acquitted of the charges as framed against him.

10. He be released forthwith, in this case, if his custody is not required in connection with any other case.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Rekha Mittal, J.

CRM-M- No. 32193 of 2014

Decided on: 13.01.2015

Bhim Singh

Petitioner

Versus

State of Punjab and another

Respondents

Present: Mr. Baljinder Singh Sra, Advocate for the petitioner.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 311, 313 -- Dishonour of cheque -- Complaint u/s 138 of NI Act -- In defence, the accused examined

Expert to prove cheque does not bear his signature -- Rebuttal evidence by complainant – Right of -- In cross-examination it was specifically put to the complainant that the Cheque does not bear the signature of accused – If the complainant knowing fully well that the accused has denied his signatures on the cheque did not opt to examine an expert, he cannot be allowed to examine an expert by way of rebuttal to defence evidence of a hand writing expert -- It cannot also be said to be an inadvertent mistake -- Section 311 Cr.P.C. is not intended to fill up the lacuna.

(Para 9-11)

Cases referred:

1. Shailendra Kumar Vs. State of Bihar and others (2002)1 Supreme Court Cases 655.
2. Iqbal Singh Vs. State of Punjab, 1999(4) RCR (Criminal) 625.

JUDGMENT

REKHA MITTAL, J. –

1. The present petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') lays challenge to orders dated 28.08.2014 (Annexure P9) passed by the Additional Sessions Judge, Patiala and dated 05.08.2014 (Annexure P8) passed by the Judicial Magistrate Ist Class whereby the application filed by respondent No.2-complainant under Section 311 Cr.P.C. for leading additional evidence has been allowed.

2. The respondent-complainant initiated the proceedings under Section 138 of the Negotiable Instruments Act 1881 (in short 'the Act') read with Section 420 of the Indian Penal Code (in short 'IPC') in regard to dishonour of cheque bearing No.746553 dated 30.05.2013 drawn on Punjab National Bank, Gur Mandi Patiala in the sum of Rs.90,000/- for discharge of liability of a loan of Rs.90,000/- obtained by the accused and the cheque was dishonoured on its presentation to the bank on account of 'insufficient funds' and the accused-petitioner failed to make payment thereof despite receipt of legal notice.

3. The petitioner was served with notice of accusation for committing offence under Section 138 of the Act to which he denied his liability and claimed trial.

4. During course of evidence, the respondent-complainant examined himself and tendered into evidence his affidavit Ex.CW1/A and documents Ex.C1 to C4 to be read as part of his statement. On evidence of the complainant being concluded/closed, statement of the accused under Section 313 Cr.P.C. was recorded and the petitioner-accused appeared in the witness box as his own witness. He further examined a document and hand writing expert in his defence to prove his plea that the cheque in dispute does not bear his signature. Subsequent thereto, the respondent-complainant filed the application under Section 311 Cr.P.C. for leading additional evidence by examining the document and hand writing expert to controvert the defence evidence which was allowed by the trial Court vide impugned order dated 05.08.2014. The revision petition preferred by the petitioner before the Court of Sessions was dismissed on ground of non-maintainability as the order

impugned being interlocutory in nature.

5. Counsel for the petitioner contends that the trial Magistrate committed a serious error rather illegality in permitting the respondent to examine an expert to rebut the evidence in defence when there is no provision in the Cr.P.C. allowing the prosecution or the complainant to lead evidence in rebuttal of defence evidence. It is further argued that in response to the legal notice issued by the complainant, the petitioner sent reply through his Advocate and it was specifically mentioned in the reply that the petitioner had lodged a report with P.P. Division No.4 Patiala on 15.07.2005 intimating that his identity card, PAN card, Form No.16, cheque of Co-operative Bank and two cheques bearing No.746353 and 746352 of Punjab National Bank along with five photographs have been lost on 12.07.2005 near Bus Stand Patiala and the complainant has come in possession of the same and misused the cheque. During cross-examination of the complainant, it was specifically put to him that the cheque Ex.C1 does not bear the signatures of the accused and it is the result of forgery. It is argued with vehemence that as the respondent-complainant knew it fully well that the petitioner has denied his signatures on the cheque in question, the petitioner was well within his right to examine an expert while leading his evidence but he did not opt to do so. Once the accused has disclosed his defence and already examined witnesses to establish his plea that the cheque in question has not been signed by him nor he had taken any loan from the complainant, the respondent cannot be allowed to lead evidence to rebut the evidence adduced in defence. The judgment relied upon by the trial Court **Shailendra Kumar Vs. State of Bihar and others(2002)1 Supreme Court Cases 655** has no bearing on the facts of the case in hand and therefore, cannot form the basis for allowing the application filed by the complainant. On the other hand, he has relied upon the judgment of this Court **Iqbal Singh Vs. State of Punjab, 1999(4) RCR (Criminal) 625** to contend that the issue is squarely covered by the judgment in **Iqbal Singh's case(supra)**.

6. Counsel for the contesting respondent (Ashok Raj Singh Pannu) has submitted that in reply to the notice, the accused has neither denied his signatures on the cheque in question nor it was clarified if the cheques allegedly stolen had his signatures or were totally blank. It is further submitted that as there was no specific denial by the accused that the cheque in dispute does not bear his signatures, he cannot derive any advantage to his contention from what has been held in **Iqbal Singh's case (supra)**. No prejudice is likely to be caused to the petitioner if the complainant is allowed to examine an expert which would otherwise facilitate the trial Court to arrive at a just decision.

7. I have heard counsel for the parties and perused the records.

8. There is no denial that application for additional evidence was filed by the respondent-complainant after the accused has already led his evidence in defence. The plea of the complainant in the application under Section 311 Cr.P.C. reads as follows:-

"The accused has examined the document and hand writing expert, who denied signatures of the accused on the cheque in his opinion. In order to controvert the defence evidence so led by the accused by examining the document and hand writing expert, it has become essential

to examine other document and hand writing expert by the complainant which is essential for the just and fair decision of the case.”

9. There cannot be any dispute about the settled position of law that the prosecution or for that reason complainant in a private complaint has no right to lead evidence in rebuttal of evidence examined in defence. It appears that the legislative intent for there being no provision for rebutting defence evidence is that as per criminal jurisprudence, it is enjoined upon the prosecution to prove culpability of the accused beyond shadow of reasonable doubt and the accused can maintain silence unless obliged to speak in view of any specific provision in law.

10. The accused sent his response to the legal notice specifically stating that he never availed of any loan nor issued any cheque in repayment thereof. He also made reference to a report lodged with the police in regard to loss of his articles including the cheque in question. No doubt, in the reply it is not specifically mentioned as to what was the status of lost cheque i.e. whether totally blank or signed blank cheque. However, during cross-examination of the complainant, it was specifically put to him that the cheque Ex.C1 does not bear signatures of the accused and is the result of forgery. A relevant extract from cross-examination of the complainant is quoted thus:-

“It is wrong to suggest that signatures appended on Ex.C1 is not of accused and it is result of forgery. It is wrong to suggest that the writing over the body over the cheque including the date are not in the writing of the accused. It is wrong to suggest that accused never met me for any financial assistance. It is wrong to suggest that accused never took Rs.90,000/- as a friendly loan from me. It is wrong to suggest that I have got the cheque unfilled from someone else and filled the same and got appended the false signatures of the accused upon Ex.C1.”

11. A plain reading of the aforesaid extract leaves no matter of doubt that the accused raised a positive and categoric plea that the cheque in dispute does not bear his signatures. If the complainant knowing fully well that the accused has denied his signatures on the cheque did not opt to examine an expert in regard to his opinion on the basis of comparison of disputed and standard signatures, he cannot be allowed to examine an expert by way of rebuttal to defence evidence of a hand writing expert. The judgment in **Iqbal Singh's case (supra)** squarely covers the present controversy wherein the application filed by the complainant to permit him to place on record the report of the expert and examine the expert after leading of evidence in defence by the accused was dismissed by the trial Court and the order passed by the trial Court was affirmed by this Court with the observations that it was obligatory on the part of the complainant to produce his evidence and during his evidence he should have proved that the cheque allegedly issued by the accused was in fact signed by him. The complainant should have produced the evidence of the expert while adducing his evidence before examination of the accused under Section 313 Cr.P.C. He cannot be permitted to fill up the lacuna at a later stage. It cannot also be said to be an inadvertent mistake. Section 311 Cr.P.C. is not intended to fill up the lacuna. In this view of the matter, I am of the considered opinion that the learned trial Magistrate committed a gross error in allowing the application of the respondent while relying upon the judgment of Hon'ble the Supreme Court in **Shailendra Kumar's case (supra)** wherein in a

murder case, the evidence of the prosecution was closed after examining two or three formal witnesses and Court held that from the facts, it appears that accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the other, the Additional Sessions Judge as well as the APP have not taken any interest in discharge of their duties. Counsel for the petitioner has failed to convince this Court as to how observations made in ***Shailendra Kumar's case (supra)*** can enure to the benefit of the respondent who was given fair and reasonable opportunity to prove his case and voluntarily closed his evidence on 02.06.2014.

12. For the reasons aforesaid, the petition is partly allowed, impugned order dated 05.08.2014 passed by the Judicial Magistrate Ist Class, Patiala is set aside leaving the parties to bear their own costs.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Surya Kant & Raj Mohan Singh, JJ.

CWP No.3271 of 2015

Decided on: 24.02.2015

Sanjeev and others

Petitioners

Versus

State of Haryana and others

Respondents

Present: Mr. Paramvir Singh Sikand, Advocate for the petitioners.

Mr. V.B. Aggarwal, Advocate for the caveator.

Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961), Section 7 – Eviction of unauthorised occupant – Execution of -- Eviction order against grandfather of the petitioner become final in 1984 -- Petitioners want to take undue advantage of the fact that it was their grandfather and/or any other family member who were the party-respondents in the eviction proceedings – Held, since the petitioners are the successors-in-interest and have stepped into the shoes of their predecessors and their names specifically figure amongst the encroachers along with the full description of the area unauthorisedly occupied by them, the law must take its own course and the consequences of the eviction order must fall upon all the encroachers without any exception.

(Para 1,6)

JUDGMENT

SURYA KANT, J. (ORAL) –

The instant writ petition, in our considered view, is a glaring example of abuse of process of law. Petitioners No.1 and 2 are sons of Ajmer Singh and grandsons of Amar Singh son of Hirda. An eviction order under Section 7 of Punjab Village Common Lands (Regulation) 1961, Act as applicable to the State of Haryana was passed by the Assistant Collector, Ist Grade, Thanesar,