

a R Banerjee Vs. State and anr.

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Court : Delhi

Decided On : Aug-08-2014

Judge : V.P.Vaish

Appellant : a R Banerjee

Respondent : State and anr.

Advocate for Def. : Mr. Parveen Bhati, Mr. Vivek Sood, Mr. Ajit Nair

Advocate for Pet/Ap. : Ms. Rebeca M. John, Mr. Harsh Bara, Mr. Nikhil Ahuja

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL. M.C. No.3742/2013
Reserved on:

23. d July, 2014 Date of Decision:

8. h August, 2014 % A R BANERJEE Through: Petitioner Ms. Rebeca M. John, Sr. Advocate with Mr. Harsh Bara & Mr. Nikhil Ahuja, Advs. Versus STATE & ANR. Through: Respondents Mr. Parveen Bhati, APP for the State. Mr. Vivek Sood, Mr. Ajit Nair, Advs. for R-2. CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1 By this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C) the petitioner assails the order dated 19.8.2013 passed by learned SCJ-Cum-RC, New Delhi in complaint case No.5536/1/09/12 titled as Anil Dogra vs. A.R. Banerjee for the offence under Section 138 of the Negotiable Instruments Act (for short the Act), whereby the application moved on behalf of the petitioner seeking opinion of GEQD in relation to hand writing of the body of the cheques in question was dismissed.

2. In short, the facts of the present case are that respondent No.2/complainant filed a complaint under Section 138 of the Negotiable Instruments against the petitioner on the allegations, inter alia, that sometime in January, 1982, the petitioner met the complainant at New Delhi and represented himself as a divorced person. On believing the representation of the petitioner, the complainant gave her consent for the marriage and accordingly, on 15.2.1982 the petitioner and respondent No.2 tied their marital knot at New Delhi. The petitioner induced and cohabited with the complainant for almost 20 years, keeping the complainant in false belief that the complainant is his legally wedded wife. The petitioner/accused never disclosed about his living wife, Mrs. Nandita Banerjee and their two issues to the complainant. In November, 2001 respondent No.2 came to know about living wife and two children of the petitioner. It is also alleged that in December, 2001, respondent No.2 confronted the petitioner with the said news and the petitioner confessed his guilt. In order to compensate the complainant, the petitioner issued cheque No.412509 dated 10.1.2002 for the amount of Rs. 5 lakhs; cheque No.412510 dated 10.2.2002 for the amount of Rs. 10 lakhs and other cheque No.412511 dated 10.3.2002 for a sum of Rs. 10 lakhs, all drawn on Andhra Bank, Navrangpura, Ahmedabad. The respondent No.2 presented the said cheques for encashment which were dishonoured with the remarks insufficient funds. The respondent No.2 issued legal notice dated 6.4.2002. Despite service of notice, the petitioner failed to make payment of the cheques in question.

3. The respondent No.2/complainant adduced his evidence and the statement of accused/petitioner under Section 313 Cr.P.C. was recorded on 15.12.2012.

4. During the pendency of the complaint, petitioner moved an application seeking opinion of GEQD in relation to handwriting on the body of the cheques in question. The said application was dismissed by learned trial court vide impugned order dated 19.08.2013.

5. Feeling aggrieved by the said order, the petitioner has filed the present petition.

6. Learned senior counsel for the petitioner contended that the petitioner has already cross-examined respondent No.2/ complainant. During cross-examination of the complainant, CW-1 Ms. Anil Dogra it was suggested on behalf of the petitioner that the name of the payee and the amount in figures on the cheques in question have been filled by the complainant and the complainant has manipulated the cheques in question and entered his name as payee.

7. The main plea of learned senior counsel for the petitioner to assail the impugned order is that the complainant had not filled up the contents of the cheques in question and that those were misused by the petitioner after filling up the blanks therein and, thus, he was entitled to prove the same by way of opinion of handwriting expert. Learned senior counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of Kalyani Baskar vs. M.S. Sampooram, (2007) 2 Supreme Court Cases 258 .

8. Per contra, learned counsel for respondent No.2 urged that the petitioner has admitted his writing on the cheques in question and no useful purpose will be served by obtaining the opinion of the handwriting expert. It was urged on behalf of respondent No.2 that complaint was filed in the year 2002 and the application was filed on behalf of the petitioner at a belated stage i.e. at the stage of final arguments.

9. I have given my thoughtful consideration to the submission made by learned counsel for both the parties. Though, it was held in Kalyani Baskars case (supra) relied upon by the petitioner that the accused should be given fair trial to lead evidence in his defence, but, at the same time, it was also held that the Court being master of the proceedings must determine as to whether the application of the accused in terms of the Section 243 (2) of Cr.P.C. is bona fide or not whether

thereby accused intends to bring on record a relevant material. Taking as it is that the blanks in the cheques and the pronotes were filled up by the respondents, still petitioner was not entitled to prove the same by way of opinion of handwriting expert.

10. At this juncture, it is relevant to reproduce Sections 20 and 87 of the Act.

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.

87. Effect of material alteration - Any material alteration of a negotiable instrument 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 the common intention of the original parties; Alteration by indorsee.- And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of sections 20, 49, 86 and 125.

11. By reason of the aforementioned provision only a right has been created in the holder of the cheque subject to the conditions mentioned therein. Thereby only a prima facie authority is granted, inter alia, to complete an incomplete negotiable instrument. The provision has a rider, namely, no person other than a holder in due course shall recover the amount from the person delivering the instrument anything in excess of the amount intended by him to paid therein.

12. In the present case, the signature on the cheques in question is admitted. That being so, the petitioner cannot dispute the contents of the cheques in question in view of the provision of Section 20 of the Act. Hence, there is no need to refer the cheques in question to the handwriting expert.

13. It has been time and again observed by the various dictums of this Court that a collective reading of the provision of Sections 20 and 87 of the Act shows that even under the scheme of the Act it is possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the drawee. There is no provision in the Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constitute a material alteration for the purposes of Section 87 of the Act. However what is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the marker, that would be a material alteration. Therefore, as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled up is different from the ink of the signature is not a material alteration for the purposes of Section 87 of the Act.

14. In the case of P.S.A. Thamocharan vs. Dalmia Cement (P) Ltd.

, 2005 (1) JCC (NI)96 Madras it was held that to have a validity of negotiable instrument such as cheque, it is not mandatory and no law prescribes that the body of the cheque should also be written by the signatory to the cheque. A cheque could be filled up by anybody, if it is signed by the account holder of the cheque, accepting the amount mentioned therein.

15. In view of the authoritative pronouncement and law laid down in the aforesaid judgments and keeping in view the true spirit of Sections 20 and 87 of the Act, the proof of filling up of the cheques in question by the respondent/complainant or any person, would not be of any relevance. The petitioner has not disputed his signatures on the cheques in question. Therefore, the presumption of issuance of cheques in question for discharge of the liability would arise against the petitioner

unless rebutted by the petitioner.

16. In the light of the above discussion, I do not find any illegality or infirmity in the impugned order dated 19.8.2013 passed by learned SCJ-Cum-RC, New Delhi.

17. The petition, being without merits, is hereby dismissed. Crl. M.A. No.13584/13
The application is dismissed as infructuous. (VED PRAKASH VAISH) JUDGE
AUGUST 8h, 2014 nk

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