

Dev Prakash Paliwal Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : May-01-2008

Reported in : RLW2009(1)Raj167

Judge : G.S. Sarraf, J.

Appellant : Dev Prakash Paliwal

Respondent : State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

G.S. Sarraf, J.

1. Briefly stated that facts are that the respondent No. 2 filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act before Judicial Magistrate No. 16, Jaipur City, Jaipur with the allegation that the petitioner issued in his favour a cheque bearing No. 8580819 dated 10.2.2003 for Rs. 7,00,000/- but the same was dishonoured. The trial Court proceed to record evidence of the complainant. The defence of the petitioner is that he lost three signed cheques including the cheque in question in the year 2001 and he informed his banker (Canara Bank) in writing about it with a request to stop clearance of the lost cheques. The petitioner examined Badri Prasad DW. 1 and produced letter Ex. D.1

2. In the aforesaid circumstances, the petitioner moved an application under Section 243 Cr.P.C. read with Section 73 of the Evidence Act and requested the trial Court to get the writing on the cheque examined by a hand-writing expert. The trial Court vide order dated 28.9.2004 declined the request of the petitioner and rejected his application. The revision petition preferred by the petitioner was also dismissed by the revisional Court vide order dated 16.10.2004. Hence the present petition.

3. Heard earned Counsel for the petitioner/and earned Counsel for the respondent No. 2.

4. Larned Counsel for the petitioner contends that his request to get the writing on the cheque examined by a hand writing expert has been made in the background that the complainant has positively asserted that the entire writing of the cheque has been written by the petitioner whereas the petitioner has denied this and has alleged that he lost three blank cheques containing his signatures including the cheque in question in the year 2001.

5. Earned Counsel for the respondent No. 2 argues that since the signatures on the disputed cheque have been admitted by the petitioner, therefore, it is not necessary to get the other writing examined by a hand writing expert.

6. The petitioner cannot be convicted without an opportunity being given to him to present his evidence and if it is denied to him there is no fair trial. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. In the special facts and circumstances of this case I find it appropriate to get the writing, other than the signatures, on the disputed cheque examined by a hand writing expert.

7. Consequently, I allow this petition and set aside the order dated 16.10.2004 of Judge, Special Court (Sati Nivaran) Rajasthan, Jaipur and Additional Sessions Judge, Jaipur in criminal revision No. 171/04 by which the order dated 28.9.2004 passed by Judicial Magistrate No. 16 Jaipur City, Jaipur in criminal case No. 189/03 dismissing the application filed by the petitioner under Section 243 Cr.P.C. read with Section 73 of the Evidence Act was affirmed. Learned trial Court shall

take appropriate steps for obtaining the report of the hand writing expert on the point whether the writing on the cheque other than the signatures, is that of the petitioner and shall proceed with the trial of the case in accordance with law. Since the case is very old learned trial Court shall proceed expeditiously.

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