

Jatinder Kumar Vs. Kishan Dev Kapila

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Court : Himachal Pradesh

Decided On : Jan-05-2004

Reported in : III(2004)BC92

Judge : Kuldip Chand Sood, J.

Acts : [Negotiable Instruments Act, 1881](#) - Section 138

Appeal No. : Crl. Revision No. 110 of 2003

Appellant : Jatinder Kumar

Respondent : Kishan Dev Kapila

Advocate for Def. : Vipul Handa, Adv. vice Subhash Sharma, Adv. and; Ashok Chaudhary, Addl. A.G. Amicus Curiae

Advocate for Pet/Ap. : Naresh K. Thakur, Adv.

Judgement :

Kuldip Chand Sood, J.

1. This petition is directed against the orders of learned Chief Judicial Magistrate, Una, dated 11.6.2003.

2. In order to appreciate the controversy, few facts may be noticed:

It appears, petitioner is facing a trial under Section 138 of the Negotiable Instruments Act, as a cheque, according to the complainant, drawn by him was dishonoured. The petitioner moved an application before the learned trial Magistrate, saying that he had not drawn the cheque in question and the signatures on the cheque may be got compared, by the Government Handwriting Expert, with his specimen signatures with the Bank. This prayer was rejected by the learned trial Magistrate on 2.6.2003. Dissatisfied, the petitioner moved another application, which again was dismissed on 8.7.2003 by the learned trial Magistrate. In this application, it was stated by the petitioner that his earlier specimen signatures were not available in the Court, which were with the Bank, on the date when this application was dismissed. But specimen signatures with the Bank were brought by the officer of the Bank and same along with the cheque may sent to any private expert for comparison. This prayer was too rejected.

3. Aggrieved, the petitioner is in this petition,

4. A perusal of Sections 138 of the Act shows that where any cheque drawn by a person on an account maintained by him with a Bank for payment of any amount of money to another person out of that account for the discharge of any debt or other liability is returned by the Bank unpaid, either because of the amount of money standing to the credit of that account is insufficient or exceeds the amount arranged to be paid from that account, then such person is deemed to have committed an offence and is liable to be punished with imprisonment for a term which may extend to one year, or with fine, which may extend to twice the amount of the cheque or with both.

5. The question before the Court for determination would be whether the person sought to be saddled with the liability under Section 138 of the Act, in fact drew the cheque in question or not? It is totally unnecessary for the Court to make an exercise to compare the signatures on the cheque with the specimen signatures which may be maintained by the Bank. It could be understood if an accused makes an application saying that he had not drawn the cheque in question and that the signatures on the cheque in question may be got compared with his admitted signatures or the specimen of which could be taken before the

Magistrate, more so for the reason that the accused could not have got the signatures compared from any expert by himself because such cheque was not in power or possession of the accused. The petitioner did not make any such prayer.

6. In the facts and circumstances, the petition is dismissed. However, dismissal of this petition shall not be an impediment in the way of the petitioner to move an appropriate application before the trial Magistrate for getting his signatures compared with that on the cheque at the expense of the petitioner. If such application is made then the Magistrate shall decide the application in accordance with law and observations made hereinabove.

7. The parties shall appear before the learned Trial Court on 30.1.2004. By that time, records of the case, the Deputy Registrar (Judicial) shall ensure reaches Trial Court.

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