Received on : 15-09-2018
Registered on : 18-09-2018
Decided on : 16-10-2018
Duration : Y. M. Days
00 - 00 - 28

IN THE COURT OF SESSIONS JUDGE, PUNE .
(Presided over by Aniruddha Y. Thatte, Addl. Sessions Judge, Court No. 14, Pune)

EXH. NO.

CRI. REVISION APPLN. NO. 497 OF 2018
CNR NO. MHPU01-012627/2018

Mrs. Pradnya Vikas Patil,
Age-43 years, Occu. Service,
R/at : Flat No.04, 4th Floor,
Ashram Apartment, PYC Colony,
Near Deccan Gymkhana,
Pune 411004. …. Petitioner
(Orig. Accused)

Versus.

1] GRUH Finance Ltd.,
Having its office at :
GRUH, Netaji Marg,
Near Mithakhali Six Roads,
Ellisbridge, Ahmedabad, and
Branch Office at :
Akruti Chambers, Pune Satara
Road, Near Swargate S.T.Stand,
Swargate, Pune 411 037.

2] State of Maharashtra,
(Summons be served upon DGP Office,
Shivajinagar Court, Pune 5) …. Respondents.
(No.1 Orig. Complainant)

Criminal Revision under Section 397 of Criminal Procedure Code.

Appearances:--
Mrs. Hendre, learned Advocate for the petitioner.
Mr. Prasad Tikar, learned Advocate for the respondent No.1.
APP for State.

JUDGMENT
(Delivered on this 16th day of October, 2018)

The petitioner / accused has challenged the legality, propriety and correctness of the order passed, by the learned Additional Chief Judicial Magistrate and Special 138 N.I. Court, Pune, on Exh.44 dated 06-08-2018 in SCC No.2969/2016.

[2] The brief facts, which are necessary to decide this petition, are as follows :-

The respondent / complainant has filed criminal case in the Court of Additional CJM, Pune, by invoking the provisions of Section 138 of the N. I. Act having S.C.C. No. 2969/2016. It is complainant's case that complainant is a company incorporated under the provisions of Companies Act and is engaged in business of finance. The petitioner / accused and her husband Vikas Patil had taken housing loan from the complainant company and it was agreed that accused and her husband would repay the amount in 360 equated monthly installments. of Rs.1,57,185/-. However, the accused was never regular and prompt in payment of the installments. An amount of Rs. 9,43,110/- was due and payable from the accused and her husband. Around six EMI's were outstanding and on demand, it is alleged that, accused issued cheque No.350679 dated 30-11-2015 for amount of Rs.9,43,110/- drawn on the account maintained by accused with ICICI Bank, Bhandarkar Road Branch, Pune. The said cheque was returned dishonoured with endorsement “Funds insufficient”, when it was presented with the banker. The complainant company issued statutory notice under Section 138 of N. I. Act and called upon accused to pay the amount and since accused failed to pay the amount, the present complaint in question was filed.

[3] It is the defence of the petitioner / accused that the cheque in dispute was a signed blank cheque issued as a security. The accused filed an application before the learned trial court for sending the cheque in question for taking opinion of handwriting expert by moving application Exh.44. The complainant filed say at Exh.45. After hearing both parties, the learned trial court by his order dated 06-08-2018 rejected the application. Being aggrieved with the order passed by the learned trial court, the accused / petitioner has challenged the same under this revision.

[4] The petitioner / accused has challenged the order passed by the trial court on the ground that the trial court has wrongly appreciated the facts before it and has failed to consider the specific defence of the accused that the signed blank cheque was given as a security and different ink was used for signature and to write other contents of the cheque.

[5] The petitioner has filed on record the certified copy

of the evidence of the accused at Exh.43 in the trial court, the certified copy of the application Exh.44 and the order passed on it, so also the say given by the complainant to the application. The petitioner has also filed on record the copy of the evidence of the complainant along with the cross-examination taken by the petitioner / accused at Exh 14 in the trial court.

[6] I have heard learned Advocate Smt. Hendre for the petitioner / accused and learned Advocate Mr. Prasad Tikar for the respondent / complainant. Both advocates have relied on the reported judgments, which I have discussed in due course.

[7] Following points arise for my determination and I record my findings against each of them for the reasons stated below.

	POINTS		FINDINGS
1.	Whether the impugned order suffers from illegality, incorrectness and impropriety ?	...	No.
2.	Whether the impugned order requires interference under the revisional jurisdiction ?	...	No.
3.	What order ?	...	The revision is rejected as per final order.

R E A S O N S

[8] **AS TO ALL POINTS** :- At the outset, I would like to note that the relationship between the complainant company and petitioner / accused is not disputed, i.e. the petitioner / accused has borrowed housing loan from the

complainant company. The petitioner / accused has taken a specific defence that she issued blank signed cheque issued as a security. The application in question Exh.44, on which the impugned order is passed, was moved after the evidence of the complainant and accused was recorded.

[9] The learned Advocate Smt. Hendre for the petitioner / accused submitted that considering the defence taken by the accused / petitioner, necessary opportunity ought to have been given by the trial court in order to probablise the defence taken by the accused. The accused has taken a specific defence that the cheque was blank signed cheque and the contents of the cheque were subsequently filled and, therefore, there was a difference between the colour and age of the ink of the signature and other contents of the cheque.

[10] The learned Advocate relied on the judgment of Hon'ble Punjab Haryana High Court in the case of **Ashok Kumar Garg Vs. M/s Aggarwal Poultries, CRR No.1034 of 2013, decided on 01-08-2013**. The learned Advocate has produced on record the copy of the judgment generated from the website *India Kanoon.org*. In the case before the Punjab and Haryana High Court, the trial court has rejected the petition for sending cheque in question to Central Forensic Science Laboratory for examination to ascertain the difference of age of the ink of the signature and writing in the body of the cheque and thereafter by considering the law laid down by the Hon'ble Supreme Court in the case of **T. Nagappa Vs. Y. R. Muralidhar, reported in**

2008(2) Civil Court Cases 569 (S.C), the Hon'ble High Court observed that the determination of the age of the ink may be one test, which could go towards the just adjudication, either by affirmation or elimination, in more ways than one. The court observed that there is no reason why the prayer of accused / petitioner should not be allowed and accordingly, the Hon'ble High Court set aside the order passed by the trial court and directed to send the cheque to C. F. S. L. for determination of the age of the ink.

[11] The learned Advocate for the complainant / respondent argued that in view of the admission given by the witness of the complainant, now there is no need of sending cheque to the handwriting expert and the Chemical Analyzer for ascertaining the handwriting and the age of the ink. He submitted that the application is intentionally moved at late stage to delay the hearing of the case and he prayed for rejection of the application. He relied on the judgment of Hon'ble Bombay High Court in the case of **The Quepem Urban Co-op.Credit Society Vs. Mr. Seby Noronha and Anr. 2018 ALL MR (Cri) 2621**. In this case, the accused had not disputed his signature on the cheque and has taken a defence that the blank cheque was given by way of security. In that case, the respondent / accused had not entered in the witness box. It is observed that it is not necessary that the entire cheque has to be filled by the accused for the purpose of raising presumption under Section 118 and Section 139 of the Act. It is sufficient that the cheque is signed by the accused. It is also held that application is made for

referring a cheque to the handwriting expert, the same has to be considered in the facts and circumstances of each case. On one hand, the accused has to be given fair opportunity to rebut the presumption, which is raised under Section 118 and Section 139 of the Act, however, on other hand, it is the duty of the Magistrate to ensure that by filing frivolous application, the accused does not protract the trial. The Hon'ble High Court was pleased to set aside the order of Sessions Court directing cheque in dispute to be referred to the handwriting expert.

[12] Now, coming to the facts in hand, I may note that not only the accused has taken defence that she had issued the blank signed cheque as a security, she has stepped into the witness box and led evidence at Exh.43, wherein she has categorically stated that she has not filled the contents of the cheque and it only bears her signature. Further, the complainant's witness whose evidence is at Exh.14, in his cross-examination has specifically admitted in para 23 of the cross-examination that the cheque in dispute Exh.29 only bears the signature of the accused and its contents were filled by the staff of the complainant company. Once this admission is given by the complainant's witness, there is no further need for accused to refer the document to the handwriting expert and chemical analyzer for determining whether the handwriting of the contents of the cheque and signature on the cheque are of different person and there is difference in age of the ink of the contents of the cheque and signature.

[13] Since the admission has come from the witness of the complainant that the contents of the cheque were filled by its staff member and not by the accused, now there is no need for sending the cheque in dispute to the handwriting expert for determining the age of the ink and for determining the dispute whether the contents and the signature are in the handwriting of the same person.

[14] Having regard to the admissions given by the complainants witness, the law laid down by Hon'ble Bombay High Court in above discussed judgment in case of The Quepem Urban Co-op.Credit Society, the learned trial court has rightly rejected the application moved by the accused.The learned trial court has rightly rejected the application moved by the accused. Once the accused got the admission from the complainant's witness about filling the contents of the cheque by its employee, moving the application Exh.44 is nothing but an attempt to protract the hearing. Therefore, I find that there is no illegality or impropriety or incorrectness in the order passed by the learned ACJM, Pune and hence I answer point No.1 and 2 accordingly in the negative and pass the following order.

ORDER

The revision petition is rejected.

Pune,
Dated/-16-10-2018

(Aniruddha Y. Thatte)
Additional Sessions Judge, Pune.

I affirm that the contents of the PDF file Judgment are same word for word as per original Judgment.

Name of Steno :- Shri. V. V. Bannur

Name of Court : Shri. A. Y. Thatte, District Judge 14 and ASJ, Pune,

Judgment signed by PO on : - 19-10-2018

Judgment uploaded on :- 20-10-2018