
(2013) 02 RAJ CK 0146

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 1161 of 2011

L.Rs. of Heera Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2014) 2 BC 577 : (2014) 1 RCR(Criminal) 1045

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—This Court had issued notice but despite service, none has appeared on behalf of the respondent No. 2. Accordingly, the revision petition has been heard finally. The instant revision petition has been filed by the petitioners-L.Rs. of Heera Singh, who was the original complainant in relation to the proceedings of Case No. 486/2006 pending in the Court of Additional Chief Judicial Magistrate, Sri Karanpur. The respondent No. 2 is facing trial in the aforesaid court in relation to offence u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act of 1881"). The respondent No. 2 moved an application in the trial court for sending the disputed cheque to the handwriting expert for comparison. The said application was rejected by the trial court on 2.7.2009. The accused respondent No. 2 being aggrieved of the order dated 2.7.2009, filed a revision and the revisional court by order dated 13.9.2011 quashed the order passed by the trial court and has directed that the cheque in question be sent to the FSL for comparison. The petitioners have approached this Court challenging the said order dated 13.9.2011 passed by the revisional court.

2. Learned counsel for the petitioner submits that in this case, the cheque of Rs. 8 lakhs was given by the accused to the complainant and an agreement was also simultaneously executed. The agreement has been exhibited in the trial court and in the agreement, the number of cheque has been mentioned. The accused has not disputed the signatures on the cheque. He further submits that no reply

to the notice was given by the accused. He thus submits that the accused has not been able to justify as to why the cheque should be sent to the handwriting expert for comparison. He also submits that a holder of a signed blank cheque in due course is entitled to fill the blanks of the cheque and present the same in the bank for encashment and such action would not be a material alteration as per Section 118 of the Act.

3. Considered the arguments advanced at the bar and perused the impugned order as well as the documents filed on the record.

4. From a perusal of the documents on the record, it is apparent when the cheque in question was advanced by the accused to the complainant, an agreement was also executed in relation to the advancement of the cheque. The agreement has been exhibited at the trial as Ex. 8. The cheque number and the amount of the cheque have been mentioned in the said agreement. The accused did not give any reply to the notice given under the Act of 1881 wherein all these facts were set out. In the cross examination of the complainant conducted at the trial, the factum of the agreement being executed has not been challenged by any suggestive questions. The application, which was filed by the accused in the trial court, does not mention any substantial reason as to why the cheque should be sent for comparison to the handwriting expert. It is a bald unreasoned application mentioning that the handwriting on the cheque should be got compared. As has been discussed above, even if a blank signed cheque is given, the holder in the due course would be entitled to fill in the blanks and then present the cheque in the Bank for encashment. Therefore, this Court is of the opinion that the revisional court was not justified in setting aside the well reasoned order of the trial court refusing to send the cheque for comparison to the handwriting expert. The accused could not make out any case whereby the trial court could have been persuaded to send the cheque for comparison. The application was only aimed at delaying the proceedings. Resultantly, the instant revision petition is allowed. The order dated 13.9.2011 passed by learned Additional Sessions Judge, Sri Karanpur is set aside and the order dated 2.7.2009 passed by the learned Additional Chief Judicial Magistrate, Sri Karanpur is restored. The trial court is directed to decide the case expeditiously.

Stay petition also stands disposed of.