

(VIA VIDEO CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on :20.12.2021

%

Pronounced on : 17.02.2022

+ CRL.M.C. 3367/2021

Naresh Chand Tyagi Petitioner

Through: Mr. Nitesh Goel, Advocate.

Versus

Devender Kumar Tyagi Respondents

Through: Mr. Shivek Trehan and Mr. Shagun
Chopra, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

Crl. M.A No. 20434/2021 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 3367/2021 and Crl. M.A No. 20433/2021 (for stay)

1. By way of this petition filed under section 482 Cr.P.C read with Article 227 of the Constitution of India, the petitioner is seeking following reliefs:-

(VIA VIDEO CONFERENCING)

- a. *Pass an order calling for the records of the Criminal Complaint NI Act case bearing No. 886/2021 titled "Devender Kumar Tyagi Vs. Naresh Chand Tyagi" filed on 12.02.2021 by the Respondent under Section 138 of the Negotiable Instruments Act pending before the Court of Ld. MM (NI Act) Digital Court-01, North West District, Rohini Court, Delhi;*
 - b. *Pass an order quashing the Criminal Complaint NI Act case bearing No. 886/2021 titled "Devender Kumar Tyagi Vs. Naresh Chand Tyagi" filed under Section 138 of the Negotiable Instruments Act and the summoning order dated 07.10.2021 taking cognizance and the proceedings emanating there from, pending adjudication the Court of Ld. MM (NI Act) Digital Court-01, North West District, Rohini Court, Delhi;*
 - c. *Pass such other and further order(s) as it may deem fit and proper in the facts and circumstances of the case and in the interest of the justice.*
2. Issue notice. Learned Counsel for respondent who appears on advance notice, accepts notice.
 3. It is submitted by the counsel for the petitioner that the learned Trial Court has taken cognizance of an offence which is not even in existence since the cheque was never issued by the petitioner. It is further submitted by him that the cheque number has been written wrongly everywhere whether

(VIA VIDEO CONFERENCING)

it is the notice or the pleadings of the complaint or even the evidence by way of affidavit which does not fulfil the ingredients of Section 138 NI Act, as it requires the complainant to issue proper legal notice within thirty days from the date of return memo issued by the bank which has not been fulfilled in the present case as the notice has been sent of a cheque different from the one which was dishonoured. It is further submitted that there is no provision of amendment in a criminal proceedings and hence, once a complaint is filed in the trial court, the complainant cannot amend it at any stage of the trial. It is further submitted that the complaint did not contain any averment with respect to the petitioner and the role played by him in commission of the alleged offence. It is further submitted by the counsel for the petitioner that the respondent has not approached the Trial Court with clean hands as, a bare perusal of the complaint shows that the complaint filed by the respondent does not disclose the correct cheque number.

4. On the other hand, it is submitted by the counsel for respondent that it is only a typographical error. It is further submitted that copy of cheque along with the bank return memo was duly annexed with the complaint displaying the correct cheque number which was issued by the petitioner herein to discharge his liability. It is further submitted that after going through all the annexed documents learned MM correctly summoned the petitioner and it was observed that there are sufficient grounds to issue summons as the cheque was returned dishonoured as funds insufficient.

(VIA VIDEO CONFERENCING)

5. Learned counsel for the respondent has placed reliance on the following judgments :-

- i. Veena V. State and Anr. 2017 SCC Online Del 9926.*
- ii. Babli Majumder V. State of West Bengal 2008 SCC Online Cal 273*
- iii. Bhim Singh V. Kan Singh 2003 SCC Online Raj 326.*
- iv. Niles Kumar Lukand V. Nirmal Bardiya 2010 SCC Online CHH 54.*
- v. Pandit Gorelal V. Rahul Punjabi 2010 (2) M.P. L.J.*

6. In the instant case, after perusing the records it is evident that there is a typographical error. Petitioner herein is denying that said cheque does not bear his signature which is a matter of fact and can be proved during the course of trial. It is pertinent to mention here that no FIR has been registered with regard to the issue that respondent has filed a complaint against the petitioner pertaining to a different cheque number or on the basis of cheque not bearing his signature. It is also not the case of the petitioner that cheques were lost or stolen which is evident from the fact that no letter/communication has been sent to bank to stop the payment of the cheques concerned. The submissions of learned counsel for the respondent has force in it. As far as the contention of the counsel for the petitioner is concerned that the cheque number has been wrongly mentioned is of no

(VIA VIDEO CONFERENCING)

relevance and such ground cannot be the reason for quashing of the proceedings. Reliance can be placed on the judgment of Rajasthan High Court in ***Oswal Finance Private Limited V. State of Rajasthan and Another*** 2014 SCC Online Raj 6663. Relevant para 6 & 7 are reproduced herein :

“6. Contention of the learned counsel for petitioner that mistake is bonafide seems to be true. Respondent has relied on 2012(2)Cr. L. R. (Raj) 904, ***M. R. Choudhary v. State of Rajasthan*** where the complaint was filed about a particular cheque whereas cheque submitted before the trial court was different. Hence the accused was acquitted but here in the present case, present petitioner wants to rectify his bonafide mistake. Further reliance has been placed on ***AIR 2008 SC 3086, Subodh S. Salaskar v. Jaiprakash M. Shah & Ors.*** where on the facts of the case, amendments on the complaint has been disallowed. But here in the present case, when complainant has been cross examined, the mistake came to the notice of complainant and application for the rectification has been moved and no person could be penalized for his bonafide mistake.

7. Hence, application is liable to be allowed and the present petitions is allowed and the order dated 26.9.2011 passed by Addl. Civil Judge (SD) cum Addl. Chief Judl. Magistrate, No.10, Jaipur Metropolitan, Jaipur in Criminal complaint no.869/2006 is set aside. Present petitioner is allowed to make necessary amendments

(VIA VIDEO CONFERENCING)

in the complaint as about the details of bounced cheque and he is allowed to file a fresh affidavit in support of his complaint and the respondent is free to cross examine on the same.”

7. Hence, the concerned trial court must look into this aspect and in my opinion the mentioning of wrong number of the cheque in the complaint would not make any difference as there are documents placed by respondent on record which gives the correct position and has to be taken as a typographical/inadvertent mistake.

8. Therefore, with the above observations present petition is dismissed. Pending applications (if any) are also disposed of accordingly.

RAJNISH BHATNAGAR, J

FEBRUARY 17, 2022

AK