

**HIGH COURT OF PUNJAB AND HARYANA**

**Before : Deepak Gupta, J.**

**Decided on : 15-12-2023**

CRM-M No. 62122 of 2023

**PG MICRO SYSTEM PRIVATE LTD.**

**Vs.**

**SOFTECH COMPUTERS**

**Legislation:**

- Section 482 of the Criminal Procedure Code (Cr.P.C.)
- Sections 138 and 141 of the Negotiable Instruments Act (NI Act)

**Subject:**

Petition under Section 482 Cr.P.C. for quashing orders related to a complaint case involving dishonour of a cheque.

**Headnotes:**

Quashing of Orders Sought – Petitioner sought to quash orders passed by Judicial Magistrate and Additional Sessions Judge, Gurugram related to a complaint under Sections 138 and 141 of NI Act for cheque dishonour - Orders rejected application to adjourn matter sine die or dismiss the complaint due to loss of original cheque in transit. [Para 1]

Complaint and Defence – Complainant Softech Computers alleged cheque dishonour by PG Micro System Pvt. Ltd. (Petitioner) - Petitioner contended cheque not issued by them and had forensic support for the same - Original cheque lost in transit before examination by RFSL, Bhondsi, Gurugram. [Paras 2-3]

Trial Court Proceedings – Trial Court dismissed application for dismissal or adjournment, citing reconstruction of lost documents and availability of cheque photographs at RFSL, Bhondsi, Gurugram - Directed continuation of trial with reconstructed documents. [Para 5]

Revision before Sessions Court – Petitioner's revision against Judicial Magistrate's order dismissed by Sessions Court, finding no illegality or perversity in the order. [Para 6]

High Court's Observation – High Court found no issue with the dishonour reason ('Payment Stopped by Drawer') unrelated to signature mismatch - Emphasized the role of trial Court in evaluating the impact of non-availability of original cheque at trial conclusion - High Court observed no ground for dismissal or adjournment due to loss of cheque. [Paras 7-9]

Dismissal of Petition – High Court found no illegality or perversity in the orders of lower courts - Dismissed the petition, affirming trial continuation. [Para 10]

Referred Cases:

Not mentioned in the given excerpt.

Representing Advocates:

Not mentioned in the given excerpt.

## **JUDGMENT**

**Deepak Gupta, J.** - By way of this petition filed under Section 482 Cr.P.C., petitioner prays to quash the order dated 16.08.2023 (Annexure P.14) passed by learned Judicial Magistrate Ist Class, Gurugram in complaint case No.NACT/6528 dated 25.05.2016, whereby the application moved by the petitioner, to adjourn the matter sine die or to dismiss the complaint, was dismissed. Under challenge is also the order dated 18.10.2023 (Annexure P.15) passed by learned Additional Sessions Judge, Gurugram, whereby revision preferred against order dated 16.08.2023 (Annexure P.14), was dismissed.

2. As it emerges, respondent - Softech Computers, filed a complaint before Judicial Magistrate Ist Class, Gurugram seeking prosecution of the accused M/s PG Micro System Private Ltd. (present petitioner) under Section 138 and 141 of the Negotiable Instruments Act (for short, 'the NI Act') regarding dishonour of a cheque for an amount of Rs. 28,00,092/-. Accused pleaded not guilty. Trial commenced.

3. It was claimed by the petitioner - accused that cheque in question had not been issued by him for discharging any liability and that the said cheque was neither signed by him nor was in his handwriting. This stand was also reiterated in the statement under Section 313 Cr.P.C. In its defence, the accused - petitioner - Company also got examined the cheque by an expert to support the stand. Complainant - respondent sought an opportunity to allow the examination of Handwriting by an Expert. Trial Court decided to send the cheque and the admitted signatures of the accused for comparison by RFSL, Bhondsi, Gurugram. However, the original cheque carrying the disputed signatures of the accused was lost in transit before forensic examination

could be conducted by RFSL, Bhondsi, Gurugram. Petitioner - accused then moved an application, either to dismiss the complaint or to adjourn the case sine die, until the cheque in question is traced.

4. Respondent- complainant opposed the application by showing apprehension that the cheque in question along with four other cheques might have been managed to be misplaced by the accused, who were not willing to get the cheque in question compared. It was pointed out that an earlier order dated 01.10.2021 of the trial Court had been challenged before this Court but the revision against that order was dismissed by Hon'ble High Court on 09.08.2022. It was further submitted that copies of the cheques were still available on the case file and that the case could be decided on the basis of evidence available on record.

5. After hearing both the sides, learned trial Court dismissed the application by observing that loss of the cheque during transit was reported to the learned District and Sessions Judge, Gurugram and after necessary instructions, the missing documents have since been reconstructed and so, there was no question of dismissing the complaint or to adjourn it sine die. Learned trial Court also observed as under:-

xxxx xxx xxxx xxxx

'It is also noteworthy to mention here that the only ground for claiming dismissal of the present complaint by the applicant/accused is that since the cheque in question has lost, Page No.2 out of 5 pages it would not be feasible for this Court to decide the genuineness of the signature on the cheque in question which is under challenge in the present case from the very beginning. However, this Court does not find the above said contention of Ld. Counsel for the applicant/ accused to be acceptable. Reason for the same is that it is not a case where there is no original cheque on the record of the case file from the very beginning. Rather, in the present case, the original cheque in question was produced by the complainant and the same has lost in transit during trial. The said document has already been reconstructed. Thus, with the help of reconstructed documents, the trial of the case can be very well proceeded further. Even otherwise, Sh. Narender Kumar, Senior Scientific Officer RFSL, Bhondsi, Gurugram has specifically suffered a statement before this Court on 28.04.2023 that the photographs of the disputed signature of the cheque in question are available in the record of RFSL, Bhondsi Gurugram vide order dated 15.11.2018 and thereafter, the original cheque was returned to the court vide intimation dated 11.06.2019. From this statement of the office bearer of RFSL, Bhondsi Gurugram, it becomes clear that photographs of the cheque in question are available with the record of RFSL, Bhondsi Gurugram and as such, accused/ applicant would be at liberty to make prayer to this court to get the disputed signature on the cheque in question examined/ compared with the admitted signatures of the accused, if the other admitted signatures are suggested by the

accused/ applicant to this Court and not objected by the opposite party, and more particularly if it is feasible for the RFSL Bhondsi, Gurugram to conduct the examination with the help of available record. The application in hand stands disposed off accordingly. The trial of the present case has already delayed. Therefore, the case is adjourned to defence evidence, if any as well as seeking the response of the accused/ applicant about the fresh examination of cheque in question as discussed above.'

XXXX XXXX XXXX XXXX

6. Against the afore-said order dated 16.08.2023 passed by learned Judicial Magistrate 1st Class, Gurugram, petitioner filed revision before the Court of Sessions, which has been dismissed vide order dated 18.10.2023 by observing that there was illegality or perversity in the impugned order.

7. It is contended by learned counsel for the petitioner that the Courts below have failed to take note of the fact that in the absence of original document, no conclusive opinion could be formed and that the mere reconstruction of the cheque would not substitute the original document for examination.

8. After hearing learned counsel for the petitioner, this Court had put a specific query to him as to whether the cheque in question had been dishonored by the concerned Bank for the reason of difference in signatures or the fact that signatures of the drawer were forged or for any other reason. Learned counsel for the petitioner conceded that cheque was not dishonored for the reason of difference in signatures and rather, the cheque was dishonored with the remark 'Payment Stopped by Drawer'.

9. It is thus clear that the banker of the petitioner did not dishonour the cheque for the reasons that signatures thereon of the petitioner differed from his specimen signatures, as available in the bank or that the signatures were forged. Apart from this, the cheque in question has already been reconstructed as observed by the trial Court. What will be the consequences of non-availability of the original cheque in the light of the afore-said circumstances, is to be appreciated by the trial Court, at the time of conclusion of trial. However, for the simple reason that cheque in question has been lost during transit, cannot be a ground either to dismiss the complaint or to adjourn the matter sine die.

10. This Court finds no illegality or perversity in the impugned orders passed by the Courts below.

No Merit. Dismissed.

