

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.M- 1321 of 2015(O&M)

Date of Decision: January 28, 2015.

Shiv Dutt

..... PETITIONER (s)

Versus

Prem Chand Sharma

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. John Kumar, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This petition has been filed by complainant-Shiv Dutt for setting aside order dated 21.11.2014 passed by the learned Judicial Magistrate First Class, Faridabad whereby his application for comparing the signatures of accused-respondent on the cheque and receipt with the admitted signatures present on the power of attorney and statement on oath before the court as well as sale-deed executed by the accused through FSL Madhuban, has been declined.

Briefly stated, petitioner filed a complaint (not on record) under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as

the 'Act') against respondent – Prem Chand alleging that a cheque for an amount of ₹4,92,034/- had been issued by him in the discharge of his liability, the same having been dishonoured by the Bank due to insufficient funds. It is alleged that the respondent-accused knowingly and deliberately with an intention to cheat the complainant, issued the abovesaid cheque. A legal notice was sent to him but payment was not made. Consequently present complaint was filed. The petitioner led evidence in support of his case. He led evidence by way of submitting his own affidavit, Annexure P4. He was duly cross-examined. Petitioner led his entire evidence and closed his evidence. In defence, the respondent-accused took a specific stand that he never signed the cheque in question and the signatures appearing on the same are forged and fabricated.

Respondent-accused examined a handwriting and fingerprint expert, who specifically opined that signatures of the accused present on the cheque in question and the admitted signatures of the respondent-accused are not similar. Said witness was duly cross-examined by the petitioner-complainant. Thereafter, an application dated 23.09.2014 (Annexure P1) was moved by the petitioner for having a comparison of the signatures of respondent-accused on the cheque and receipt with his signatures on power of attorney and statement on oath as well as sale-deed executed by him by the Forensic Science Laboratory at Madhuban. Reply to the application (Annexure P2) was filed.

Learned trial court vide impugned order dated 21.11.2014 dismissed the said application of the petitioner keeping in view the fact that the petitioner was aware of the respondent's stand and he had not taken any such steps for

comparison of the signatures till the fag end of trial after the defence had led its evidence. Aggrieved therefrom, the petitioner has filed the present petition.

Learned counsel for the petitioner contends that under the Act there is a presumption drawn in favour of the complainant that the cheque in question has been issued by the accused in discharge of his liability. It is for the respondent-accused to rebut this presumption under Section 139 of the Act. It is only after the examination of an expert by the accused that a cause of action has arisen to the petitioner to ask for the verification of the signature of the accused on the cheque in question. There was no need or requirement for the petitioner to have moved such an application at an earlier stage. It would make no difference that this application has been moved after the defence evidence has been led. Petitioner has a right to rebut the evidence brought on record by the respondent-accused in defence.

It is submitted that respondent-accused, Prem Chand was examined as DW3 on 03.06.2014. His cross-examination was conducted on 14.08.2014. The abovementioned application (Annexure P1) was moved on 23.09.2014 without any delay, the cause of action having arisen on 14.08.2014. In case this application is not allowed, an irreparable damage shall be caused to the petitioner.

I have heard learned counsel for the petitioner and gone through the file.

A perusal of the cross-examination of petitioner (Annexure P4) clearly shows that the stand of the respondent-accused was clear at the very outset. Cross-examination of the petitioner was conducted on 08.05.2013.

There is a specific suggestion to the petitioner that the cheque in question had been stolen from the house of the accused, who is the brother-in-law (Jija) of the petitioner. He has denied that signatures of the accused are not appended on the cheque or it is not filled up and handed-over by him. He has denied the suggestion that a blank cheque was stolen by him, filled up and signed through some other person or himself and thereafter, proceedings initiated. A true translation of the relevant part of the cross-examination of the petitioner reads as under:-

“XX XX XX XX

..... Prem Chand accused is my brother-in-law (Jija). It is incorrect that I am on good visiting terms with my sister. The visiting of mine is stopped at the house of my sister since 1-1/2 years. Before that we used to visit at house of each other. It is incorrect that I have stolen the cheque. Voluntarily said, I have receipt of money. I have receipt of Rs.4,92,034/- which is dated 16.05.2011. It is correct that I have not got written about receipt in my complaint. Cheque Ex.C1 is filled in the writing of accused Prem Chand and there are signatures of accused on it. It is incorrect that cheque Ex.C1 is not filled up by accused Prem Chand and it is not signed by him. It is incorrect that I have stolen the blank cheque and had got it filled up from some other person or signed himself and is presented in the court.”

The petitioner did not take any steps in this regard and it is only once respondent-accused examined an expert that the present application has been moved. The petitioner admittedly does not have any vested right to have the comparison done of the signatures on the cheque with the other standard signatures as alleged, at this stage. It has rightly been held that the evidentiary

value of handwriting expert and all other evidence brought on record would be decided at a later stage of arguments. There is no requirement of sending the cheque in question to Forensic Science Laboratory, Madhuban for any further opinion. In case such an interpretation is accepted, every time the accused would lead evidence in defence, the complainant would claim a right to lead evidence for rebutting the same. Such a procedure is unknown to law.

Learned counsel for the petitioner has referred to judgments in **Sheshrao Krishnarao Umredkar v. H.K.Pande and another, 2012(7) RCR (Criminal) 1188** of Bombay High Court and **Maruthi Processors and others v. R.Sburamaniam, 2013 ACD 514** of Madras High Court. I am of the considered view that the said decisions can be of no avail to the petitioner in the peculiar facts and circumstances of the case. In Sheshrao Krishnarao Umredkar's case (supra) it has been observed by the Bombay High Court that it is for the complainant to establish positively that the cheques were issued towards discharge of a legally enforceable debt or liability by the accused where the accused is successful in rebutting the presumption under Section 139 of the Act. In Maruthi Processors' case (supra), the Madras High Court held that the court is empowered to call upon the accused to give his thumb impressions in exercise of power under Section 311A Cr.P.C.

There can be no quarrel with the proposition that the court is vested with power to call upon the accused to give his thumb impressions and such an order cannot be violative of Article 20(3) of the Constitution of India. In the peculiar facts and circumstances of this case, no right vests in the petitioner to claim examination of the signatures by FSL Madhuban.

Thus, there is no infirmity or irregularity in the impugned order dated 21.11.2014 passed by the learned Judicial Magistrate First Class, Faridabad which warrants interference by this Court.

Keeping in view the above, this petition being devoid of any merit is dismissed.

January 28, 2015.
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(LISA GILL)
JUDGE