

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

CRM-M No.16616 of 2015

Date of decision: 1st October, 2015

Deepak Sharma

... Petitioner

Versus

Shakuntla Soni

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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

Mr. Aditya Jain, Advocate
for the respondent.

FATEH DEEP SINGH, J.

Through this petition under Section 482 Cr.P.C., the petitioner Deepak Sharma has sought quashment of the order dated 12.03.2015 (Annexure P4) passed by the Court of learned Judicial Magistrate 1st Class, Faridabad whereby the application of the petitioner to examine the Handwriting Expert for opinion as to the alleged signatures of respondent Shakuntla Soni, which were subject matter of dispute on receipt dated 29.03.2011 Ex.D1, was declined.

Heard Mr. Shiv Kumar, Advocate for the petitioner and Mr. Aditya Jain, Advocate representing the respondent and perused the records.

The essential background that deserves to be highlighted is that the respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 and Section 420 IPC against the accused/petitioner regarding the accused having a friendly loan of ₹20.00 lacs and in acknowledgement and return of which the accused is alleged to have issued a cheque bearing No.609412 dated 06.09.2012 for a sum of ₹5.00 lacs drawn on Oriental Bank of Commerce, Sector 7, HUDA Market, Sihi, Faridabad and which stood dishonoured due to insufficiency of funds and thus, leading to filing of the complaint and summoning.

The contentions of learned counsel for the petitioner that throughout the trial it has been the defence of the accused that on the basis of the receipt in question Ex.D1 he has settled the dues and therefore, there was no question of any legally recoverable debt towards the complainant and which receipt though has been denied by the complainant and thus, it was a vital and essential document to throw light on the stand of the complainant and the defence of the accused/petitioner as well as for judicious appreciation.

Though the prayer is opposed vehemently on behalf of the respondent, however, having regard to the fact that in the totality of circumstances it is an essential evidence to throw light on the case as

well as the defence and in its absence though it is also conceded by the learned counsel for the respondent, the accused will be denied his legitimate right to lead defence and therefore would certainly affect his defence and will be a prejudicial approach of the Court in denying such a valuable right of defence.

The learned trial Court merely on the premise that Ex.D1, the receipt, was only a supportive document and if such applications are allowed would open floodgates of such like applications and thus, declined the request and though has acknowledged that the accused has a right to lead this defence by leading cogent and convincing evidence to establish his defence but has declined this relief, are matter which cannot only be termed as a prejudicial approach but is totally an erroneous one which goes against the tenets of judicial principles. To have a fair trial is a legitimate right of the accused and in case he is denied so, would certainly be a mistrial.

Though not argued but as it comes to the mind of this Court, as has been laid down in '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, the provisions of Section 482 Cr.P.C. though are to be sparingly used and in view of the law laid down in '**Rajendra Kumar Sitaram Pande v. Uttam**' 1999(1) RCR (Criminal) 800 SC, an order which affects substantially the rights of a party cannot be termed as an interlocutory order and since the petitioner could have easily invoked the jurisdiction and approached the Court in terms of Section 397 Cr.P.C. by filing a revision rather

than coming to this Court under Section 482 Cr.P.C. However, in view of the ratio laid down in '**Dhariwal Tobacco Products Ltd. and others v. State of Maharashtra and another**' 2009(1) RCR (Criminal) 677, as has been relied upon by the petitioner's counsel coupled with the fact that the trial is at fag end and the petitioner cannot be scuttled from laying down his defence as it would run counter to the principles of dispensation of justice and in view of which, the impugned order (Annexure P4) being wholly illegal and untenable is set aside by way of acceptance of the instant petition. However, the trial Court shall ensure that the matter is expeditiously disposed off by giving short adjournments.

In the light of these observations, the present petition stands allowed in those terms. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

October 1, 2015
rps