

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

CRM-M-39020 of 2014

Date of Decision: 16.07.2015

Manjit Singh

... Petitioner

Versus

Bhupinder Jeet Singh

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Naresh Jain, Advocate
for the petitioner.

Mr. Ivneet Singh Pabla, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

Petitioner has assailed order dated 16.10.2014 passed by Additional Chief Judicial Magistrate, Kurukshetra, vide which prayer of petitioner for summoning Mani Jain-Document Expert, Ambala with record and photographs of disputed cheque in defence evidence has been declined.

Petitioner is an accused in a criminal complaint under Section 138 of Negotiable Instruments Act. Petitioner has denied his signature on the cheque in question. In the defence evidence, petitioner had moved an application seeking permission for inspection and taking photographs of disputed and standard signature by the Document Expert for comparison. Said prayer of the petitioner was allowed by the Court on 23.07.2014. The expert has already prepared his report. According to learned counsel for the petitioner, examination of said expert is necessary for tendering the report in defence

evidence and also for proving the same. In such eventuality, complainant would be having right to cross examine the expert in order to shatter the veracity of report in question.

The prayer of the petitioner has been declined by trial Court on the premise that aforesaid act would delay the disposal of the case.

I have considered the rival submissions of both the sides.

Once the application seeking permission for inspection and taking photographs of disputed signature by the Document Expert has been allowed on 23.07.2014, then equally important is that the party should be allowed to rely upon that by way of tendering the same in evidence and to prove its execution. Accused-petitioner has all the right to examine evidence in defence with reference to such report, which was prepared in pursuance to lawful permission accorded by the Court. Even otherwise, Court would become functus officio only with the pronouncement of judgment, otherwise before the pronouncement of such judgment, Court has ample powers to summon any person as a witness at any stage of inquiry/trial or proceedings, if such evidence is just and appropriate for decision of the case. Such powers cannot be guided by any restrictive mechanism, if in the opinion of the Court it would help in arriving at correct decision of the case.

It is equally settled principle of law that the Court at any time in inquiry or proceedings can summon any person as

witness or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person, if his evidence appears to be essential for just decision of the case.

Once the Court has allowed the petitioner to have access to inspection and taking photographs of disputed and standard signature by Document Expert for comparison, vide its order dated 23.07.2014, then it was obligatory on the part of Court to allow the petitioner to reap the benefit of such report by way of allowing examination of the witness in Court for the purposes of proving execution of the said report.

The Courts have all the jurisdiction under Section 311 Cr.P.C to prevent failure of justice on account of mistake either of the party to bring available evidence on record or leaving an ambiguity in the statement of witness. It is not only prerogative of the Court but also a duty to examine such witness which it considers necessary for doing justice between the parties. The consideration before the Court is to visualize as a determinative factor, whether the evidence in question is essential for just decision of the Court or not? In the present case, mere tendering of report of the expert would not serve its purpose as mere tendering of document does not dispense with prove of execution.

The underlined principles were well defined in

Hanuman Ram Vs. State of Rajasthan and others, AIR 2009,

SC 69.

In criminal trial, fair opportunity is required to be given to the accused to prove his innocence. This is the object of every fair trial. In **Hoffman Andreas Vs. Inspect of Customs, Amritsar (2000) 10 SCC 430**, Hon'ble Apex Court emphasized that the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matters as enshrined in Section 311 Cr.P.C. After all, the trial is basically for the accused and the Court should afford opportunity to them in the fairest manner as possible.

Looking to the facts and circumstances of the case, I deemed it appropriate to allow the petitioner to examine the expert so as to prove the report in question. Resultantly, impugned order dated 16.10.2014 passed by Additional Chief Judicial Magistrate, Kurukshethra is hereby quashed. The application submitted by the petitioner to examine Mani Jain-Document Expert with record and photographs of disputed cheque in his defence is allowed.

Disposed of.

July 16, 2015
prince

(RAJ MOHAN SINGH)
JUDGE