

In the High Court of Punjab and Haryana at Chandigarh

CRM No. M-5772 of 2013
Date of decision: 06.01.2015

Mohandeep Singh Pahwa

.....Petitioner

Versus

M/s Rohan Enterprises

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.S.S.Narula, Advocate,
for the petitioner.
Mr. Anuj Raura, Advocate
for the respondent

SABINA, J.

Petitioner has filed this petition challenging order dated 29.1.2013 (Annexure P1) whereby application moved by the petitioner to permit the hand writing expert to take photographs of the original cheques from the Court file for comparison, was dismissed.

Learned counsel for the petitioner has submitted that the petitioner-accused was also entitled to adduce evidence in support of his defence. Trial Court by dismissing the application had taken away valuable right of the petitioner to lead his defence to prove his innocence.

Learned counsel for the respondent, on the other hand,

has opposed the petition and has submitted that the petitioner had not cited hand writing expert as a witness in the list of witnesses submitted by him. Petitioner had exhausted the list of witnesses by examining the all the cited witnesses.

Respondent has filed the complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 qua dishonour of cheques in question. During the pendency of the trial, petitioner moved an application (Annexure P2) seeking permission that hand writing expert be permitted to take photographs of original cheques from the Court file. Vide impugned order dated 29.1.2013 (Annexure P1), the said application was dismissed. Hence, the present petition.

A perusal of the cross-examination of Ajay Chuchra CW3 placed on record as Annexure P3 reveals that a specific suggestion was put to the witness that he had filled the amount and date in the cheques in question, which were blank. It was also put to the witness that the cheques in question had been lying with him since the year 1998 as security.

Thus, from the cross-examination of CW3, it is evident that the case of the petitioner is that the cheques in question were blank signed cheques and were lying with the witness as security. In order to establish the said plea, petitioner wants to examine the hand writing expert. In case, petitioner is not allowed to examine the hand writing expert to establish his plea, he would be denied the opportunity to lead evidence in support of his defence. Petitioner, who is an accused, is also liable to be given fair and proper

opportunity to prove his innocence.

Trial Court, in the facts and circumstances of the present, fell in error, while rejecting the application (Annexure P2) moved by the petitioner .

Accordingly, this petition is allowed. Impugned order dated 29.1.2013 (Annexure P1) is set aside. Consequently, application (Annexure P2) moved by the petitioner is allowed.

**(SABINA)
JUDGE**

January 06,2015
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