

CRM-M-27921 of 2012 (O&M)

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

Sr. No. 258

CRM No.M-27921 of 2012 (O&M)
Date of decision: September 02, 2016

Tejinder Pal Singh

.... Petitioner

Versus

Rakesh Kumar Gupta

.... Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. M.S. Bedi, Advocate,
for the petitioner.

Mr. Pardeep Bajaj, Advocate,
for the respondent.

JASPAL SINGH, J.

CRM No.53694 of 2012

Application is allowed as prayed for.

Main Case

By virtue of the instant petition preferred under Section 482 of the Code of Criminal Procedure, petitioner has sought quashing/setting aside of order dated August 21, 2012, whereby an application moved under Section 45 of the Indian Evidence Act, 1872 (for short 'Act') by the petitioner seeking opinion of the expert/FSL report to determine the age and colour of the ink as well as handwriting upon the cheque has been dismissed.

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2. While assailing the impugned order, it has been contended by learned counsel for the petitioner that the only ground which has weighed with the learned Magistrate for dismissing the application filed by the petitioner is that it has been moved just as a delay tactic which is factually incorrect. In fact, the defence of forgery was taken by the petitioner even at the time when reply to notice under Section 138 of Negotiable Instruments Act, 1881 was given. Similar, defence has been taken when statement of the petitioner was recorded under Section 313 Cr.P.C. After recording of his statement, he has only obtained three dates for adducing defence evidence. Thereafter, the application in question was filed. Thus, by no stretch of imagination, it can be said that the application was used as a tool to delay the trial.

3. Learned counsel for the petitioner has further contended that a fair trial demands that no lacuna should be left in defence of the accused and as such, no prejudice would be caused, if, the cheque in question is sent to the Forensic Science Laboratory or to the expert for its examination to determine the age and colour of the ink as well as handwriting.

4. On the other hand, learned counsel for the respondent has supported the impugned order submitting that after availing three opportunities, the petitioner filed an application under Section 45 of the Act just to protract the trial. Otherwise also, mere allegation that cheque is a forged and fabricated one is not suffice for giving direction to send the cheque for its examination by a forensic expert.

5. This court has given an anxious thought to the aforesaid rival submissions made by learned counsel for both the parties, however, this

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court finds legal and factual weight in the submissions made by learned counsel for the petitioner.

6. Undoubtedly, scientific evidence in these days are available for finding out the age and colour of the ink and the handwriting appearing on a document and as such, the cheque in question can be subjected to the test as suggested by various scientists. The Hon'ble Madras High Court in the case of 'Elumalai Vs Subbaramani, 2012(1) RCR (Civil) 59' has held in the detailed judgment as to what techniques are available in finding out the age of the ink in a document. Further, in the case of 'A. Devaraj Vs. Rajammal reported as 2011(4) RCR Criminal 102' it has been held by the Hon'ble Madras High Court that the scientific facility to determine the age of ink is available in CFSL Hyderabad. As such, to further the cause of justice it was incumbent on the part of the learned JMIC, Luthiana to send the disputed cheque for examination from an expert or by the FSL to find out the truth and by rejecting the application rather the justice has been curtailed.

7. In fact, while passing the impugned order, learned Magistrate has failed to appreciate that the petitioner, right from the beginning of the proceedings, has taken a specific stand that the cheque is a forged and fabricated one and has not been signed by him. Similar, defence was taken in his statement recorded under Section 313 Cr.P.C. by the petitioner. Moreover, no prejudice is going to be caused to the respondent/complainant in case the cheque is sent for expert opinion.

8. In the light of what has been discussed above, this court is of the considered view that impugned order dated August 21, 2012 is not sustainable in the eyes of law and as such, the same is set aside by way of

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acceptance of the instant petition. Accordingly, the trial court is directed to send the cheque in question to Central Forensic Science Laboratory, Chandigarh (for short 'CFSL') for determining the age and colour of the ink as well as handwriting of the petitioner. However, to ensure that trial court proceedings are not unnecessarily delayed, CFSL is directed to send its report within four weeks after the receipt of cheque in question from the trial Court.

9. Nothing observed hereinabove would affect the merits of the case.

10. A copy of this order be sent to the concerned quarters for compliance.

September 02, 2016
Avin/Ankur

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No