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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2892/2015 & CrI.M.A. No.10301/2015**

Date of Decision : 23rd August, 2016

MANOJ KUMAR PETITIONER

Through: Mr.Abhimanyu K.Singla, Adv.

versus

VIPIN GAUTAM RESPONDENT

Through: Mr.Manish Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S. TEJI, J

1. The present petition has been preferred by the petitioner under Article 227 of the Constitution of India read with Section 482 of Code of Criminal Procedure (Cr.P.C.) for setting aside the impugned order dated 12th February, 2015 passed by the learned Additional Chief Metropolitan Magistrate (North), Rohini in C.C. No.126/1/14 and allowing the specimen handwriting (comprising figure work also) of the respondent to be taken in the Court for the purpose of its comparison with the disputed handwriting appearing on the cheque in question.

2. The facts giving rise to the present petition are within the narrow compass and to the extent necessary, have been reproduced hereinafter. A complaint under Section 138 of the Negotiable

Instruments Act, read with Section 420 of the Indian Penal Code (IPC) was filed by the respondent against the petitioner in respect of the dishonourment of a cheque issued for a sum of Rs.3,00,000/-. The said cheque was issued by the petitioner in discharge of his liability against a friendly loan which was given by the respondent to the petitioner in cash. Learned counsel for the petitioner has stated that the said criminal complaint was false and was lodged with a view to extort money from the petitioner. It is alleged that the petitioner was not in friendly terms with the respondent and no such friendly loan was given by the respondent to the petitioner.

3. Learned counsel for the petitioner has further submitted that the petitioner had issued a blank signed cheque to the respondent qua security of a committee (chit fund) which was being run by the respondent and in which the petitioner was one of the member. It is stated that at the time of becoming a member of the said committee, the respondent demanded a blank signed cheque as a security which was a condition applicable on all members. It was further submitted that the petitioner took a chit fund for a sum of Rs.50,000/- which was to be paid in instalments spread over a period of twenty months. After repayment of all instalments, the petitioner demanded his cheque in question which was not returned by the respondent on the plea that the same was misplaced and

would be returned as and when found.

4. Learned counsel for the petitioner has submitted that one of the members of the chit fund did not make payment to the respondent and under the garb of the said excuse, the respondent asked the petitioner and other members to contribute the said defaulted amount of the defaulter member which was plainly refused by the petitioner and irked over it, the respondent fabricated the blank signed cheque and filed the complaint in question.

5. In support of his case, learned counsel for the petitioner relies on the version of cross-examination of the respondent in which the respondent denied that he was running a committee by saying “I do not run committees”. The respondent in his cross-examination further stated that “I cannot tell the exact date on which I advanced the loan to the accused but it might be in the year 2007. I do not remember exactly whether the loan was advanced in summer season or winter season” and “today I cannot show any document in writing regarding giving the loan of Rs.3,00,000/- to the accused by me.” It was further stated by the respondent that he did not know the exact date when the accused gave him the cheque but it was given sometime on 26.09.2009 or 26.06.2009.

6. Learned counsel for the petitioner has next contended that

since the respondent had denied all the handwritings on the record to be in his hand and that there was no admitted sample of his handwriting available on the record, the petitioner moved an application under Section 311-A before the Court below on 8th May, 2012, seeking issuance of direction to the respondent for giving his specimen handwriting in order to correlate his available handwritings which was available on record. It is alleged that the said application was wrongly dismissed by the Trial Court without appreciating the scope, purpose and legislative intent of Section 311-A, on the ground that recourse to Section 311-A of the Cr.P.C. cannot be taken simply to procure the evidence for the parties and that the accused in his defence can examine the handwriting expert or himself as a defence witness. It is alleged that in view of the dismissal of the said application, a comparison of handwriting cannot be done by any handwriting expert as the sample/standard handwriting would not be available.

7. Learned counsel for the respondent, on the other hand, has denied the averments made by learned counsel for the petitioner. It is submitted by him that the first application under Section 311-A Cr.P.C. moved by the petitioner, was allowed and the respondent was cross-examined. However, another application under Section 311-A Cr.P.C. moved by the petitioner for issuance of direction to

the respondent for giving his specimen handwriting in order to correlate his available handwritings which was available on record, was without any just cause and reason. It is further alleged that the petitioner had concealed the material facts from this Court as well as from the Court below.

8. I have heard learned counsel for the parties at length & gone through the available records. The cheque was admittedly tendered by the petitioner to the respondent. It transpires from the record and as submitted by learned counsel for the petitioner that during cross-examination, the respondent had denied having filled up the body of cheque in his own handwriting and as the respondent had denied the same, in order to compare with handwriting on the alleged cheque, a specimen handwriting was required for the purpose of sending the same to the Forensic Science Laboratory. However, the remedy provided by Section 311-A Cr. P.C. cannot be availed for the purpose of procuring the evidence. The Court can exercise its power for handwriting sample only when it appears pertinent to do so either for the purpose of investigation or for the purpose of trial. The petitioner has no bar to examine the handwriting expert or himself as a defence witness.

9. Section 311-A of the Code of Criminal Procedure, reads as

under:-

“Section 311-A Power of Magistrate to order person to give specimen signatures or handwriting.- If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting.

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”

10. As per Section 311-A of the Cr.P.C., a magistrate is having discretion to ask the accused or any other person to give specimen signatures or handwriting. But the proviso to Section 311-A of Cr.P.C. clearly provides that no order under the Section can be made unless the person has at some time been arrested in connection with investigation or proceedings of the case. In the present case, it is an admitted fact that the respondent-herein is neither the accused nor was ever arrested. He is the complainant in the present case, therefore, as per proviso to Section 311-A of the Cr.P.C., he cannot be asked to give specimen signatures or handwriting. This Court has gone through the ratio of judgment in

the case of ***Dr. Suyog Vs. The State of Maharashtra and Prosecutrix MANU /MH/0514/2014*** in which it was observed as under:-

“14. Perusal of the above Section makes it clear, specially the Proviso, that it relates to the power of the Magistrate to direct any person including an accused person to give specimen signatures or handwriting, if it is considered expedient for the purpose of investigation or proceeding, provided, the person concerned had at some time been arrested in connection with the investigation or proceedings concerned. It is pertinent to note that Respondent No. 2-prosecutrix is not an accused nor a person who was arrested in connection with investigation or proceeding concerned. Section 311-A of the Code of Criminal Procedure does not apply to the facts of the present matter.”

11. Even otherwise, this Court observed in number of cases that once matter is referred to Forensic Science Laboratory for obtaining experts opinion, it takes about four to five years in getting the report. Apparently, the complaint in the present case was filed in the year 2009 and more than seven years have already been passed. If the handwriting and signatures of the complainant are allowed to be sent to FSL for comparison, it would take another four to five years in disposal of the complaint case and such a practice cannot be appreciated. It appears that the petitioner is adopting delaying tactics on one or the another pretext, which he cannot be allowed to do so.

12. In the aforementioned facts and circumstances, this Court does not find this a fit case for exercising jurisdiction under Section 482 Cr.P.C. for setting aside the order dated 12th February, 2015 passed by the learned ACMM dismissing application under Section 311-A of the Code of Criminal Procedure.

13. As a result of the same, the present petition and application are dismissed.

(P.S.TEJI)
JUDGE

AUGUST 23rd, 2016
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