

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

CRM-M-22309 of 2014

Date of Decision: February 06, 2017

Satnaryan Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Chanakya Pandit, Advocate
for the petitioner.

Mr. Gurvir Sidhu, AAG, Punjab.

FATEH DEEP SINGH, J.

This is petition preferred under Section 482 Cr.P.C by the petitioner who has sought to challenge an impugned order dated 16.05.2014 (Annexure P/1) passed by the learned Additional Sessions Judge, Hoshiarpur, whereby on the prayer of the respondent No.2 Sunita Sharma she has been granted opportunity to examine her signatures on the cheque in question with her standard signatures by a handwriting expert.

Heard, learned counsel for the parties and perused the records of the case.

The brief facts are that in a criminal complaint preferred under Section 138 of the Negotiable Instrument Act, (in short, 'the Act') pending before the Court of learned SDJM, Mukerian filed by the present revisionist Satnaryan against Sunita Sharma an application was moved by

the accused-applicant Sunita Sharma for appointment of handwriting expert to compare and examine her signatures on the disputed cheque with her admitted signatures. It is by no means differed that during the course of recording of defence evidence the accused examined DW2 Kamlesh Rawat, Clerk of Oriental Bank of Commerce, who has only stated that chequebook containing disputed cheque No.514663 was issued to someone whose signatures do not tally with the specimen signatures of Sunita Sharma with the bank and which has led to filing of application and which was dismissed by the learned Magistrate but was allowed in revision by the Court of learned Additional Sessions Judge, Hoshiarpur. It is well elicited as has been contended by the learned counsel for the petitioner that during the course of cross-examination of Satnaryan by the accused side a suggestion has been put to him that the cheque was given to him by Vijay Sharma husband of the accused which was with the bank without the consent of accused Sunita Sharma and she has no knowledge about the cheque in question. It is not the case of the respondent-accused that she is not a holder of bank account of which the cheque in question was issued and it is not the case of the bank officials as well that this chequebook containing the disputed cheque was never issued in the name of the account holder namely Sunita Sharma. It is nobody's case throughout the trial during the cross-examination of the complainant witnesses to this effect that cheque does not belong to Sunita Sharma and at belated stage when the defence apparently has exhausted all evidence a novice device has been chalked out to unduly delay the proceeding by having resort to such a means . More so, in her stand taken under Section 313 Cr.P.C as is apparent on record and cannot be

displaced by the learned counsel for the accused she has taken the stand that she has handed over some blank signed cheques to her husband and she never used them personally or gave it to the complainant and, thus, invariably leads to only conclusion that she accepts that the cheque belongs to her and bears her signatures makes it abundantly clear what is at the back of the mind of the accused for moving such an application and it has been rightly given a well reasoned consideration by the learned trial Magistrate in his well reasoned order. The learned 1st Appellate Court in revision has only given a reasoning that since CW2 Vijay Mahajan and DW2 Kamlesh Rawat both officials of Oriental Bank of Commerce have opined that signatures of the accused differs from the specimen signatures with the bank does not means or cannot be construed so. More so, in terms of Section 139 of the Act a natural presumption flows which is rebuttable in favour of the holder of the cheque and which the accused needs to rebut. Though, by mere preponderance of probabilities her own stand during the course of trial is contrary to what she has sought to prove through her application certainly goes against her. The ratio on which the learned Court below in the impugned findings has sought to place reliance is factually at much variance. Especially, when a party has taken up a self contradictory stand at the trial dehors her to any such relief. It is much legitimately exposed that her stand is not bonafide. It can by no means taken that valuable right of the accused would be denied by not accepting such a prayer when it was never her stand throughout the trial are matters of much relevance.

Learned counsel for the respondent could not show otherwise by her stand taken at the trial. Together with the initial orders of

this Court dated 7.7.2014, whereby, this fact has been duly considered by the Court and the own admission of the officials of the Bank that cheque Ex.C1 was issued by their branch and after considering had issued memo Ex. C2 that there was insufficient amount in the account to honour the same rather puts the bank officials in a bad light that why they did not object to the same at initial stage. Rather to help the client have tried to reverse their stand and certainly evidence of this defence witness needs to be deprecated at this stage as well. The Court below in exercising powers under Sections 399 and 397 Cr.P.C has only gone into the very legality and propriety of the findings or an order and cannot comprehensively adjudicate on surmises and conjectures as has been done so and remained totally in oblivion to the stand of the accused taken under Section 313 Cr.P.C and during cross-examination of the PWs.

Thus, in the totality of what has been detailed and discussed above, the impugned orders dated 16.05.2014 certainly suffers from illegality and perversity causing immense prejudice to the petitioner's case and resulting in circumvention of law and, thus, necessitates this Court to intervene in the interests of justice. Thus, the same needs to be set aside by way of acceptance of the present petition setting aside the impugned order and upholding the findings of the trial Court.

Ordered accordingly.

(FATEH DEEP SINGH)
JUDGE

February 06, 2017

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No