

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

CRM-M No.23078 of 2017 (O&M).

Date of Decision: 03.07.2017.

Zile Singh

....Petitioner.

VERSUS

Jogender Kumar

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Munish Gupta, Advocate for the petitioner.

SNEH PRASHAR, J.

CRM-20048-2017

Allowed, as prayed for.

CRM-M-23078-2017

This petition has been filed invoking the provisions of Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C."), for quashing the order dated 10.05.2017 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Narnaul, vide which the application of the petitioner for permission to give his specimen writing was dismissed.

The submissions made by Mr. Munish Gupta, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argues that the cheque in question, on which the complaint of the respondent-complainant is based, was never issued by the petitioner. During his cross-examination, the

respondent testified that the columns of the cheque in question were filled up by the petitioner himself. To prove that the testimony of the respondent is false, the only mode available to the petitioner is to get his specimen handwriting examined/ compared with the writings on the cheque. The right of defence is an inherent right of the petitioner-accused which cannot be taken away from him.

Copy of the application filed by the petitioner before learned trial court is Annexure-P3. In his application, the petitioner pleaded that he wants to get the disputed writing, signature, amount and date available on the cheque in question examined with his specimen writing and accordingly prayed that his specimen writing be taken in the Court. Apparently, the prayer is inconsistent and not tenable as the specimen writing cannot be used to compare the signatures on the cheque.

It has been recorded by learned trial court in the impugned order dated 10.05.2017 (Annexure-P5) that at no stage during the trial the petitioner (accused) had alleged that the cheque in question does not bear his signatures. It has also been observed that in his statement recorded under Section 313 Cr.P.C., the stand taken up by the petitioner is that another cheque was got encashed by the complainant and the impugned cheque had been misused by him and to prove his version the petitioner had examined a witness in his defence. Meaning thereby that the defence set up by the respondent is that the amount due had already been paid by him and the cheque in question is being misused. When during the trial, the petitioner at no stage has disputed the signatures present on the cheque, alleged to be his signatures and he also during his statement under Section 313 Cr.P.C. as

the cheque, his prayer to get his signatures or writing compared with his specimen signatures/ writing is apparently nothing but a tactic to delay the trial.

The contention of learned counsel that the respondent (complainant) in his statement had stated that the columns of the cheque were filled in by the petitioner himself and therefore, the petitioner by examining a handwriting expert wants to nullify his statement, seems to be misconceived. Copy of the statement of the respondent-complainant (Annexure-P2) is attached with the instant petition. A perusal of the same shows that although the respondent testified that the cheque was filled by Zile Singh (petitioner), but he simultaneously stated that the cheque was not filled by the petitioner in his presence and that he had brought the cheque after filling the same inside his house. Therefore, it was not the version of the respondent that the columns of the cheque i.e. the amount, date etc. written, were filled by the petitioner-accused in his presence. Said is the factual position. Otherwise also, the handwriting of the particulars filled in the columns of the cheque is immaterial when the signatures on the cheque are not disputed by the petitioner.

Thus, there being no merit in the petition, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

03.07.2017
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No