

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

**CRM-M-25248 of 2016 (O&M)
Date of Decision: January 10, 2017**

Rajesh Kumar

.....PETITIONER(s).

VERSUS

Harish Kumar

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr.Gaurav Tangri, Advocate,
for the petitioner.

Mr.Sandeep Arora, Advocate,
for the respondent.

SURINDER GUPTA, J.(Oral)

Heard.

The petitioner who is facing trial in the complaint filed by the respondent for offence punishable under Section 138 of the Negotiable Instruments Act, moved an application dated 11.5.2016 (Annexure P-4) seeking permission to allow the expert engaged by him to examine the case file and take photographs of the relevant documents as mentioned in the application so as to enable him to submit his report. The application was dismissed by the learned trial court with the observations that it appears to have been moved only to delay the proceedings and the case was again fixed for defence evidence.

Vide application (Annexure P-4), the petitioner has sought to examine the expert for comparing his signatures on the cheque with the documents, i.e., agreement dated 21.12.2011, affidavit dated 28.12.2011 and writing dated 8.11.2011 alleged to have been executed by him. Even in his statement under Section 313 Cr.P.C., the petitioner had taken the plea that

these documents are forged and fabricated. It appears that the learned Judicial Magistrate considered the application moved by the petitioner as seeking permission to compare his signatures on the cheque. The stand of the petitioner is that the cheque was deposited with the complainant as security which implied that he is admitting his signatures on the cheque.

Learned counsel for the petitioner submits that the purpose of moving the application was to compare the signatures of the petitioner on the documents mentioned above to prove that these are forged and fabricated.

The case was at the stage of defence evidence when the application was moved. Evidence sought to be produced by the petitioner by examining expert is material evidence. Even after the dismissal of the application, the case was again fixed for defence evidence which shows that there was no reason to draw conclusion that the application had been filed for delaying the proceedings in the trial. There is no reason to deny opportunity to the petitioner to prove his plea that documents, which are basis of claim of complainant, are forged and fabricated

In view of my above discussion, this petition has merit and is allowed. The impugned order is not legally sustainable and is unjustified, hence set aside. The trial court will allow opportunity to the expert engaged by the petitioner to examine the documents, take photographs and to submit his report and then proceed further with the trial in accordance with law.

January 10, 2017

Paritosh Kumar

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No