

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-2740-2016 (O&M)

Date of decision: September 20, 2017

Tiromani

.....Petitioner

Versus

Nitin Juneja

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vikas Kumar, Advocate for the petitioner.
Mr. Jagjot Singh, Advocate for the respondent

ARVIND SINGH SANGWAN, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for setting aside the order dated 30.11.2015 (Annexure P3) passed by the trial Court, vide which the application filed under Section 311 Cr.P.C. by the petitioner-accused for sending the cheque in dispute to Government Laboratory for comparison of the ink on the cheque and to ascertain that the same was not filled up in the handwriting of the petitioner-accused at the time of handing over the blank cheque (Annexure P2) as well as the prayer to re-examine DW4, M.T.Gaur, Chief Manager of the Bank of Maharashtra was dismissed and also the order dated 8.1.2016 (Annexure P4) passed by the Revisional Court vide which the revision petition filed by the petitioner was dismissed.

Brief facts of the case are that the respondent-complainant filed

a petition under Section 138 of the Negotiable Instruments Act, 1881(for short `the Act') with the allegation that the petitioner-accused has issued a cheque dated 26.12.2013 amounting to ₹3,40,000/- in discharge of his liability and, on presentation of the same, the bank dishonoured the cheque with an endorsement `*funds insufficient*'.

After the complainant closed his evidence, the petitioner-accused examined 4 DWs. DW4 M.T.Gaur, Chief Manager, Bank of Maharashtra deposed that the Bank was computerized in the year 2007 and manual record pertaining to the year 2003-04 is not available with the Bank as it is more than ten years old and the account of the petitioner-accused was changed to computerized account in the year 2007.

Learned counsel for the petitioner has submitted that, in fact, cheque in dispute was given to the father of the complainant in the year 2003 as a surety for taking of loan from him and was never intended for discharge of any legal liability towards complainant. Thus, after the conclusion of the statement of DW4, the present application was filed with a prayer that the cheque be sent to the Government Laboratory for comparison of the disputed cheque with other particulars including signatures of the complainant and other scriptions on the cheque and also prayed for re-examination of DW4 M.T.Gaur.

The trial Court, after hearing both the parties, vide impugned order dated 30.11.2015 (Annexure P3) dismissed the application. It was held that since the signatures were admitted by the petitioner-accused, there was no necessity to send the cheque to Government Laboratory and mere fact that payee's name and amount in cheque are in different handwriting is

no reason to sent it to Government Laboratory as the burden is on the drawer of the cheque to establish date, amount and payee's name were written by some one else and without the knowledge and consent of the drawer. With regard to the second prayer for re-examination of DW4, the trial Court held that since this witness has stated that the record relating to the year 2003-04 has already been destroyed, there is no necessity to recall this witness as he has already produced the letter dated 19.3.2015 acknowledging that the record has been destroyed.

Feeling aggrieved the petitioner has filed the revision before the revisional Court and the revisional Court, while dismissing the revisions petition has passed the following order on 8.1.2016:-

"After taking into consideration the aforementioned facts and circumstances of the case, it is clear that various opportunities have already availed by the revisionist for examination of the witness. It does not affect the case of revisionist that payee's name and amount shown are not in the handwriting of drawer as it is well settled that it is not necessary that entire body has to be written on the cheque by the drawer only. The only thing which is mandatory is signature of the drawer. As far as contention of the revisionist regarding re-examination of the witness M.T.Gaur is concerned, this Court is of the view that as per record the said witness has suffered statement in the Court and he has not brought any record and has also stated to the effect that the record has been destroyed and no useful purpose would be served by calling the said witness at this stage. The case is at its finality. After

going through the impugned order, this Court does not find any illegality or infirmity in the impugned order. Hence, the present revision petition is hereby dismissed. LCR along with copy of this judgment be sent back. File be consigned to record room after due compliance."

Learned counsel for the petitioner has relied upon the judgment of the Apex Court in T.Nagappa vs. Y.R.Muralidhar (2008)5 Supreme Court Cases 633 wherein it has been held that the accused has a right to fair trial and under Section 243(2) Cr.P.C., when an accused applied to the Magistrate for issuance of any process for compelling the attendance of any witness for production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of delay or defeating the ends of justice. Hon'ble the Supreme Court held as under:-

The issue now almost stands concluded by a decision of this Court in Kalyani Baskar (Mrs.) v. M.S. Sampooram (in which one of us, L.S. Panta, J., was a member) wherein it was held (SCC p.262 para 12) :

"12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the

expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

Learned counsel has also relied upon the judgment in **A.Sivagnana Pandian vs. M.Ravichandran** 2012(1) RCR(Criminal) 471 where it has been held that if a request of the accused is made for sending the cheque for expert opinion with regard to age of ink utilized for signatures, such request should be allowed.

Section 311 Cr.P.C reads as under:-

“Power to summon material witness, or examine person present.-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any

person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Thus, as per the above provision, the trial Court has ample power to recall a witness for further examination, if it is necessary for the just decision of the case

Though, there is no dispute with regard to the power of the Court for providing fair trial as per Section 243(2) Cr.P.C., yet I find no merit in the present petition. Firstly, it has come in the statement of DW4 that the cheque belonged to the old pattern which was discontinued in the year 2007 when the banks were computerized. It has also come in the statement of DW4 that no record is available with the Bank prior to the year 2007. As per the policy, the bank does not retain the record which is more than ten years old, therefore, in view of the fact that the petitioner has admitted the cheque bears his signature, the burden is on the drawer of the cheque to establish that the date, amount, payee's name were endorsed by some one else or without the consent and knowledge of the drawer. Therefore, no purpose will be served by sending the cheque to the Government Laboratory as prayed for by the petitioner. With regard to the second prayer for recalling witness DW4 for re-examination, no ground is made out as this witness in clear terms has stated that the Bank has destroyed the record prior to the year 2007.

In the application filed under Section 311 Cr.P.C, nothing is mentioned as to why this witness needs to be examined. Hence, at this

stage, petitioner cannot be allowed to fill up the lacuna in his case. Provision of Section 311 Cr.P.C. is not to be used for the said purpose. In these circumstances, learned trial Court has rightly dismissed the application filed by the petitioner under Section 311 Cr.P.C.

No ground for interference is made out.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

September 20, 2017
arya

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No