

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

**CRM No.M-33364 of 2017 (O&M)
Date of Decision: December 07, 2017**

Kuldeep Rana

...Petitioner

VERSUS

Paras Wadhwa

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Parminder Singh, Advocate
for the petitioner.

Mr.J.P.Sharma, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent Paras Wadhwa for setting aside the order dated 02.08.2017 passed by learned Judicial Magistrate Ist Class, Karnal.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that a complaint was filed by Paras Wadhwa against Kuldeep Rana under Section 138 of the Negotiable Instruments Act. During the pendency of the case, an application was moved by the accused seeking permission for taking photographs of the

cheques and other exhibited documents by Handwriting and Finger Print Expert for comparison of handwriting over the body of the cheques in question with the specimen writing of accused. It has been further stated that complainant in cross-examination has specifically asserted that the columns of the cheques in question were filled by the accused but the fact is that the cheques were not filled up him, so the examination of Expert is necessary for just and proper decision of the case.

Learned JMIC, Karnal, vide impugned order dated 02.08.2017, dismissed the application by stating and by citing the law on that point, that even if the blank cheque is given, even then, that blank cheque can be filled up by the complainant.

From the perusal of the record, I find that the impugned order dated 02.08.2017 passed by learn JMIC, Karnal, is not as per law. In a case under Section 138 of the Negotiable Instruments Act, a presumption is raised under Section 139 of the Act, in which the accused has to raise probable defence. Learned counsel for the petitioner-accused contended that to prove probable defence, this fact is necessary and also to falsify the case of the complainant.

At the time of arguments also, learned counsel for the respondent has not admitted the fact that body of the cheque is filled up by someone else. In such a position, the evidence which the petitioner-accused wants to produce before the trial Court, is necessary for the just decision of the case. The dismissal of the application moved by the accused amounts to denying the opportunity to the accused to lead evidence to prove his case.

As regarding the value of the evidence, that can be seen at the time of final decision of the case by the trial court. At this stage, accused-

petitioner cannot be denied opportunity to prove his defence and for producing evidence, which is relevant and necessary to prove the defence version.

Therefore, finding merit in the present petition, the same is allowed. The impugned order dated 02.08.2017 passed by learned JMIC, Karnal, is not as per law and the same is set aside. The application moved by the accused-petitioner stands allowed..

December 07, 2017
Vgulati

Whether speaking/reasoned
Whether reportable

(INDERJIT SINGH)
JUDGE
Yes
No