

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

CRR-2718-2017

Date of decision : 25.10.2017

Vipin Saluja

..... Petitioner

Versus

Sandeep Kumar

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Gulshan Mehta, Advocate
for the petitioner.

Mr. Durga Dutt Sharma, Advocate
for the respondent.

H.S. MADAAN, J.

This revision petition is directed against order dated 18.07.2017 passed by Judicial Magistrate Ist Class, Hisar vide which she has dismissed application filed by the petitioner-accused for examination of handwriting expert. The accused by way of filing this revision petition prays that same be accepted the impugned order be set aside and he be allowed to examine the handwriting expert.

Briefly stated the facts of the case are that complainant – Sandeep Kumar had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against accused - Vipin Saluja on the allegations that

the latter had issued cheque No.32002714 dated 01.06.2016 in favour of former on account of discharge of financial liability, however on presentation it was returned uncashed due to insufficiency of funds in the account of accused. The accused failed to make payment within stipulated period despite service of statutory notice giving rise to filing of the complaint.

The accused was summoned and he is facing trial. The case is at stage of defence evidence. The accused had moved an application to examine the handwriting expert with regard to credibility of writing of name and date on the cheque. The complainant had opposed the application, the trial Magistrate dismissed the said application for the reason that the cheque was filled up by the accused himself in his own handwriting so the question of examination of handwriting expert does not arise and that the application had been filed just to linger on the matter.

Feeling aggrieved the accused had filed the present revision petition, notice of the same was given to the complainant who has put in appearance.

I have heard learned counsel for the parties, besides, going through the record and I am of the considered view that the revision petition deserves to be allowed and the accused – petitioner be given a chance to examine the handwriting expert by way of accepting the application. The accused is rather running a risk by examining handwriting expert, since if the writing in the cheque is confirmed to be in the hand of the accused that would seal his fate. Even otherwise report of the handwriting expert and his testimony is of the opinion nature and the Court may accept or discard the same as per its judicial discretion. The complainant would get an

opportunity to cross-examine the witness. Even otherwise the case is to be decided keeping in view all facts and circumstances and not entirely on the basis of report / testimony by the handwriting expert. The complainant is not going to be prejudiced in any manner. Therefore, the revision petition is accepted the order under revision petition is set aside, resultantly the accused-petitioner be permitted to examine the handwriting expert. To avoid delay in the trial, the parties through their counsel are directed to appear in the trial Court on 09.11.2017. The trial Magistrate would fix a date for the purpose of examining the handwriting expert by the accused, the report of the handwriting expert be got placed on record well before the said date with advance copy to the complainant, thereafter the defence evidence be got concluded and case be decided preferably within one month of the date of receipt of order in the Court.

25.10.2017*Gaurav Sorot*

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**