GAURAV SOROT
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40143-2018
Date of Decision:-13.09.2018

Sudhir Mongia

… Petitioner

Versus

Sudesh Kumari

... Respondent

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CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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Present:- Mr. Jangvir S. Hooda, Advocate
for the petitioner.

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GURVINDER SINGH GILL, J. (Oral)

By way of filing this petition, the petitioner assails order dated 04.09.2018 passed by learned Additional Sessions Judge, Gurugram whereby an order dated 13.07.2018 passed by learned Judicial Magistrate Ist Class, Gurugram declining an application moved by accused for seeking permission to get cheque in question examined from handwriting expert had been affirmed.

The petitioner is facing trial for an offence under Section 138 of Negotiable Instruments Act, 1881 on the allegations that a cheque dated

08.01.2017 for an amount of ₹9 lakhs allegedly issued by the accused in discharge of his liability had been dishonoured. After the complainant's evidence had concluded and the accused had been called upon to lead his evidence the matter was adjourned for few dates during the course of which two DWs had been examined and thereafter an application was moved on behalf of the accused seeking permission to get the cheque in question examined from a handwriting expert mainly on the ground that cheque in question had been handed over as a blank signed security cheque and that it is the complainant himself who had filled in cheque in question and had presented the same. It is further the case of the petitioner that although the complainant has asserted that the cheque in question was issued in the January 2017 when he was in Medanta Hospital, Gurugram whereas the accused stood discharged from the hospital on 14.02.2016 and that the accused had examined the concerned Clerk from Medanta Hospital, Gurugram to establish the said fact. The petitioner thus wanted to examine the handwriting expert and to direct the complainant to give his handwriting for the examination of the handwriting expert.

Learned trial Court while considered rival contentions before the Court noticed that during the course of cross-examination of the complainant, the complainant had admitted that the contents of the cheque in question were filled in by him and thus reached at the conclusion that there was no need to examine handwriting expert.

Upon a revision petition having been filed challenging the said order dated 13.07.2018, the learned Court of Additional Sessions Judge,

Gurugram affirmed the aforesaid opinion and dismissed the revision petition which has been challenged by way of filing present revision petition.

Learned counsel for the petitioner while assailing the impugned order has submitted that it is not just the handwriting which is sought to be examined from handwriting expert but he also wishes to get the age of the handwriting ascertained so as to demolish the case of the complainant that the cheque in question had been filled in when the accused was in hospital. The learned counsel has further submitted that the accused in any case has right to lead defence evidence and the said right cannot be scuttled short. Learned counsel in this context places reliance upon judgment of Hon'ble Apex Court titled as *Kalyani Baskar vs. M.S. Sampoornam, 2007(1) R.C.R. (Criminal) 311*.

I have perused the cited judgment. There is no dispute to the proposition of law laid down in the cited judgment to the effect that an accused is entitled to a fair trial. In the cited case an application for sending the cheque in question to a handwriting expert seeking his opinion had been declined on the ground that the applicant/accused has not named any person as a witness to be summoned. The said facts are distinct from the present case inasmuch as the present application has been declined on the ground that the purpose for which opinion of the handwriting expert is sought already stands served by admission of the complainant in his cross-examination to the effect that he (complainant) had filled in the cheque in question.

As regards the contention of learned counsel that he wishes to seek information of the handwriting expert as to the age of the writing, this

Court in *2015(4) RCR(Criminal) 68 Sudarshan Kumar Versus Manish Manchanda*, wherein an accused, facing the trial in a complaint under Section 138 of the Negotiable Instruments Act, 1881 had moved an application at the stage of the defence evidence, for sending the cheques in question to the Director Forensic Laboratory for the purpose of determining the age of the writing in the body of the cheque in terms of the signature, and his application had been dismissed, upheld the order of dismissal. The relevant extract reads as under:-

> "6. This Court in case *Yash Pal v. Kartar Singh, 2003 (3) RCR (Civil) 701*, has also laid down that expert opinion to check the *age* of *ink* cannot help to determine the date of writing of the document as the *ink* used in the writing of the document may have been manufactured years earlier.
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> 7. In case *Tarsem Singh v. Ravinder Singh 2014(11) RCR (Civil) 2112*, this Court has again reiterated that there is no scientific method available for determine the *age* of the *ink* . In case *S. Gopal v. D. Balachandran 2008(2) RCR (Criminal) 466*, the Hon'ble Madras High Court has taken the same view and laid down that the *age* of the *ink* cannot be determined by an expert with scientific accuracy. The same legal position has been reiterated in cases *R. Dennis Raja v. T. Subbiah 2012 (3) RCR (Criminal) 212*, *K. Vaiavan v. Selvaraj 2012(4) RCR (Criminal) 942* and *Vinod Maroti v. Jitendra 2015 ACD 198.*
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> *8.* Thus, in view of the consistent rule of law laid down in the cases referred above, it will not be possible for an expert to give any definite opinion on the *age* of the *ink* as there is no accurate scientific method to determine the *age* of the *ink*."

In the present case the difference of the period in question which the petitioner seeks to get ascertained from examination of cheque is merely 1 year. The 'ink-science' is not so developed so far to give opinion to such accuracy. It has has been observed in above-referred judgment that there is no accurate scientific method to determine age of ink. In any case, I find that the said purpose already stands served when the official from the Medanta Hospital, Gurugram who was examined by the accused stated specifically about the discharge of the accused from the hospital on 14.02.2016.

In view of the aforesaid position, I do not find any infirmity in the impugned order and the same is hereby affirmed. Finding no merit in the revision petition, the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

13.09.2018
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No