

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

**Criminal Misc. No.M-40784 of 2015 (O&M)
Date of Decision: September 06, 2018**

Rajesh Gupta

.....PETITIONER(s).

VERSUS

Gurdeep Kaur

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Naveen Sharma, Advocate
for the petitioner (s).

Mr. Sumeet Sagar Maini, Advocate
for the respondent.

SURINDER GUPTA, J.

This is petition under Section 482 Code of Criminal Procedure for quashing of order dated 19.03.2015 (Annexure P-5) passed by the Court of Judicial Magistrate 1st Class, Ludhiana in complaint case bearing No.COMA/43040/2013 dated 15.06.2011 for the offence under Section 138 of Negotiable Instruments Act, 1881 and order dated 10.09.2015 (Annexure P-6) passed by Additional Sessions Judge, Ludhiana, whereby revision against order dated 19.03.2015 was dismissed.

Heard.

Petitioner moved an application to engage a Hand-writing Expert for comparison of particulars of the cheque. The application is not happily worded but it appears that petitioner intended to get compared the

hand-writing on the cheque with his specimen hand-writing to prove that the same was not filled up by him.

The submission of learned counsel for the petitioner further clarifies the intention of the petitioner while moving this application. He has referred to the statement of complainant when she appeared as CW1 and had stated that body writing of the cheque was written by the petitioner in his own hand-writing. Learned counsel for the petitioner submits that the expert has been sought to be examined only to disprove the statement of complainant to this effect.

Learned counsel for the respondent-complainant submits that the law is well settled that if the body writing of the cheque is not in the hand-writing of the person, who had issued the cheque, it does not invalidate the same. Learned trial Court has rightly declined the application of the petitioner keeping in view the above legal proposition.

Admittedly, complainant while appearing as CW1 has stated that in the body of the cheque, date, name as well as amount was filled up by the accused in her office. So far as the legal proposition regarding presumption attached to a cheque proved or admitted to have been signed by person issuing is concerned, the same will be considered at the time of disposal of the case keeping in view the other facts and circumstances that have come on record. Allowing permission to the petitioner to engage (examine) the Hand-writing Expert will not cause any prejudice to the complainant. In view of the legal proposition that even if the cheque has not been filled up by the person, who had signed the same, it does not make it invalid, cannot be a reason to deny the permission to the petitioner to

examine the expert, particularly when complainant has stated that body writing of the cheque was filled up by the petitioner in her office.

Keeping in view the above facts, this petition is allowed. Impugned orders are set aside and the application filed by the petitioner to engage (examine) Hand-writing Expert namely Shri Inderjit Singh and to submit his report before the Court is allowed. The petitioner will submit report of the Expert before the trial Court within a period of 15 days and examine him on the first date, so allowed by the trial Court.

September 06, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***