

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

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**CRM-M-4316-2018 (O&M)
Date of Decision : 20.07.2018**

M/s P.L.Forging Pvt. Ltd. and another

...Petitioners

Versus

M/s Bhushan Power & Steel Ltd.

...Respondent

CORAM:HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present: Ms. Seema Pasricha, Advocate for the petitioner.

Mr. Ashwani Talwar, Advocate for the respondent.

P.B. BAJANTHRI, J.(ORAL)

In the instant petition, petitioner has challenged orders dated 10.10.2017 (Annexure P1) and 16.01.2018 (Annexure P2) passed by the Judicial Magistrate Ist Class, Chandigarh whereby petitioners application for examining handwriting expert has been rejected. Pursuant to the complaint No. 512 dated 17.09.2014 titled as M/s Bhushan Power & Steel Limited Vs. M/s P.L.Forgings Pvt. Limited and others.

2. Learned counsel for the petitioner submitted that reasoning assigned for the purpose of entertaining the petitioners application for examination of handwriting expert stated in para 3 is arbitrary and illegal. Such reasoning could be taken at the time of passing final order if any. There is no hurdle for examination of handwriting expert in respect of a particular document.

3. Per contra, learned counsel for the respondent while resisting the contention of learned counsel for the petitioners submitted that there is no

error committed by the JMIC, Chandigarh in Annexures P1 and P2. Learned counsel for the petitioner relied on Section 20 of the Negotiable Instruments Act which shows that only signatures are relevant. Therefore, question of examination of handwriting expert may not be necessary.

4. Heard learned counsel for the parties.

5. Crux of the matter in the present petition is whether petitioner can seek necessary relief in respect of examining handwriting expert in the present case or not? Perusal of the reasoning assigned by the Judicial Magistrate Ist Class, Chandigarh in para 3 is incorrect and the principle laid down in the cited decision is not assisting in respect of the petitioners grievance like examination of handwriting expert. The Hon'ble Supreme Court in the case of T.Nagapa versus V.R. Murlidharan 2008(5)SCC 633 held as under:-

"10. The learned trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of [Section 20](#) of the Negotiable Instruments Act. The very fact that by reason thereof, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bona fide.

11. The issue now almost stands concluded by a decision of this Court in [Kalyani Baskar v. M.S. Sampooranam](#) (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 because even in adopting this course, the purpose is to enable the Magistrate 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."

12. *However, it is not necessary to have any expert opinion on the question other than the following :*

"Whether the writings appearing in the said cheque on the front page is written on the same day and time when the said cheque was signed as 'T.Nagappa' on the front page as well as on the reverse, or in other words, whether the age of the writing on Ext.P2 on the front page is the same as that of the signature 'T.Nagappa' appearing on the front as well as on the reverse of the Cheque Ext.P2?"

13. *Ms. Suri, however, pointed out that the application of the appellant being one under [Section 293](#) of the Code of criminal Procedure was rightly*

rejected. It is now a well settled principle of law that non-mentioning or wrong mentioning of provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order.

14. For the aforementioned reasons, the impugned judgment cannot be sustained. It is set aside accordingly with the aforementioned directions. Appeal is allowed."

Section 20 of Negotiable Instruments Act would not be hurdle in so for examination of handwriting expert as desired by the petitioners. That apart no prejudice would cause to respondent. In view of the above facts and circumstances, Annexures P1 and P2 are set aside. Petitioner's application is allowed. Trial court is hereby directed to examine handwriting expert on behalf of the petitioners within a reasonable period of 2 months.

6. With this observation, petition stands allowed.

20.07.2018

pooja saini

**(P.B. BAJANTHRI)
JUDGE**

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No