

**201-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1876-2014 (O&M)

Date of decision: August 30, 2018

Puneet Kumar

....Petitioner

Versus

Amandeep Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Rajiv Joshi, Advocate
for the petitioner.

Mr. Vishal Aggarwal, Advocate
for the respondent.

RAJ SHEKHAR ATTRI, J.(ORAL)

Through this revision petition filed under Section 401 of the Code of Criminal Procedure (for short 'Cr.P.C.'), petitioner is challenging order dated 30.05.2014 (Annexure P-5) in Criminal Complaint No.1008/2/09 of 22.07.2008, whereby the application filed under Section 311 Cr.P.C. for examination of expert witness to elicit the differences in ink on the cheque in dispute was declined.

Undisputedly, complainant/respondent-Amandeep Singh had filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner. The case was fixed for defence evidence under Section 243 Cr.P.C. read with Section 247 Cr.P.C. He moved an application under Section 311 Cr.P.C. for permission to cross-examine the handwriting expert. The said application was contested by the complainant-Amandeep Singh and the same was dismissed vide order dated 30.05.2014 mainly on the ground that the accused has admitted his signatures on the cheque in question. Therefore, he cannot dispute with regard to his handwriting on the cheque.

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

Hon'ble the Supreme Court in *Zahira Habibullah Sheikh and another v. State of Gujarat and others*; 2006 (2) RCR (Criminal) 448, has held in para 25 and 26 as under : -

"25. In this context, reference may be made to Section 311 of the Code which reads as follows:

"311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case." The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon

the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

26. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

In the case in hand, it is always the case of the petitioner that the cheque in question was given as security at the time of running STD/PCO by the complainant in the year 2002-03 but those cheques were filled and prepared in the year 2008 i.e. after lapse of 5-6 years of its signing. Therefore, he wants to examine the document expert to compare the ink which has been used in the signatures and the body of the cheque in question.

Apart from it, it is a settled proposition of law that providing the parties adequate opportunity to adduce evidence is part of fair trial.

Accused has statutory right to adduce evidence and his this right cannot be curtailed on the ground of delay.

Hon'ble the Supreme Court in *T. Nagappa Vs. Y.R. Muralidhar*, 2008(3) R.C.R. (Criminal) 926, has discussed a similar proposition of law wherein it was observed as under:-

"An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, which reads as under : "Section 243 - Evidence for defence. (1) ..

(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice."

8. *What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps*

therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant.

9. 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.

The issue now almost stands concluded by a decision of this Court in [Kalyani Baskar \(Mrs.\) v. M.S. Sampooram \(Mrs.\)](#) [(2007) 2 SCC 258] (in which one of us, L.S. Panta, J., was a member) wherein it was held :

"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 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."

10. 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 Ex.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 Ex.P2?"

In this view of the matter, this court is of the view that the examination of handwriting expert as prayed in the application is essential for just decision of the case and in the interest of justice, it will not cause any prejudice to the case of the respondent/complainant.

This impugned order suffers from illegality and is not sustainable in the eyes of law. Consequently, this appeal is accepted and impugned order dated 30.05.2014 stands *set aside*. The application under Section 311 Cr.P.C. filed by the petitioner stands allowed.

The trial court is directed to expedite the trial and give adequate opportunity to lead petitioner to lead defence evidence.

(RAJ SHEKHAR ATTRI)
JUDGE

August 30, 2018
m. sharma

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No