

Crl. Misc. No. M-10499 of 2016

Date of Decision: February 27, 2019

Sandeep Mehra @ Babl

.....Petitioner

versus

Chander Parkash Madan

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Shivam Malhotra, Advocate
for the petitionerMr. Aayush Gupta, Advocate
for the respondent

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Sudhir Mittal, J. (Oral)

The petitioner is the accused in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. He is aggrieved because vide order dated 25.01.2016 (Annexure P-6) the trial Court has rejected his prayer for examination of handwriting expert and vide order dated 26.02.2016 (Annexure P-8) his evidence has been closed by order.

Learned counsel for the petitioner submits that the trial Court was in error in dismissing his application for examination of handwriting expert on the ground that he had not taken the defence that the signature on the cheque in dispute had been forged because the cross-examination of the complainant shows that a specific question in this regard was put to the complainant. Even in the statement of the petitioner recorded under Section 313 Cr.P.C., it has been so stated. Further, on 26.02.2016 two witnesses have been summoned by the Court but they did not appear despite service. Thus, the petitioner could not be penalized because the fault did not lie with him.

Learned counsel for the respondent fairly states that one opportunity may be granted to the petitioner to conclude his evidence subject to payment of

From the cross-examination of the complainant as well as from his statement recorded under Section 313 Cr.P.C., it is evident that the plea of his signature having been forged by the complainant has been specifically taken. Thus, the order dated 25.01.2016 (Annexure P-6) refusing permission for examination of handwriting expert is illegal and perverse and is liable to be quashed. Regarding the closure of defence evidence by order, suffice to say that the petitioner could not be punished for the fault of the witness. If a witness does not appear despite service, the trial Court must adopt coercive step to secure their presence rather than closing evidence, therefore, order dated 26.02.2016 (Annexure P-8) also can not be sustained.

The argument of counsel for the respondent that subject to imposition of costs one opportunity may be granted to conclude the evidence is liable to be rejected because the petitioner is not at fault. The orders impugned, are illegal and thus, there is no question of imposing costs on the petitioner.

The petition is, accordingly, allowed and orders dated 25.01.2016 (Annexure P-6) and 26.02.2016 (Annexure P-8) are quashed.

The parties are directed to appear before the trial Court on 15.03.2019. The petitioner will be permitted to get his signatures on the cheque in dispute examined by handwriting expert to be produced on a date to be fixed by the trial Court. Thereafter, the petitioner shall be granted one effective opportunity to conclude his evidence and the assistance of the Court shall be granted for securing the presence of the witness.

February 27, 2019
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No