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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M- 37628-2015 [O&M]

Date of Decision : March 19, 2019

Sanjay Kumar

.... Petitioner

Versus

Deepak Yadav

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Rajesh Lamba, Advocate,
for the petitioner.

Mr. Shashi Kumar Yadav, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for setting aside order dated 10.09.2015 (Annexure P/3) passed by learned Judicial Magistrate Ist Class, Faridabad whereby application under Section 45 of the Evidence Act for getting the report/opinion from Handwriting Expert on the cheque (Ex. C/1) bearing No. 664230 dated 30.07.2010 for a sum of Rs.9.00 lakhs was dismissed.

2. Learned counsel for the petitioner contended that the petitioner had filed an application before learned Magistrate for sending the cheque in question for report from CFL/FSL regarding the handwriting available on the cheque as the same was filled up by the accused in his own handwriting. Learned counsel further contended that the petitioner had taken a specific plea in the application (Annexure P/1) that cheque amount

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has been shown to be Rs.9.00 Lakhs. In the cross-examination, the accused had stated that the cheque was issued as blank signed cheque as surety against the loan of Rs.1.00 Lakh and has refused to accept his handwriting on Ex. C/1. For fair trial, application was filed for getting the handwriting on the cheque in question compared from Handwriting Expert, which has been dismissed by learned trial Magistrate without going into the real controversy and learned trial Judge has observed that the presumption is that the report would be in favour of the present petitioner only.

3. Learned counsel for the respondent contended that learned trial Judge has already considered all these aspects while passing the order dated 10.09.2015 (Annexure P/3) and there are no grounds to set-aside the same.

4. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that complaint under Section 138 of the Negotiable Instruments Act, 1881 was pending before learned Magistrate. Accused-respondent has refused his handwriting on the cheque Ex. C/1, meaning thereby that he had never issued the said cheque and had moved application for sending the cheque for comparison purpose, which was declined.

5. Similar matter was before Hon`ble Apex Court in **Kalyani Baskar Vs. M.S. Sampooram, 2007 (1) R.C.R. (Criminal) 311** and Hon`ble Apex Court observed as under:-

“11. Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. 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

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compared by a hand-writing 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 hand-writing expert has deprived the appellant of an opportunity of rebutting it... ”

6. Identical view was taken by Hon`ble Karnataka High Court in

Shri Ishwar Vs. Sri Suresh, 2010 (2) R.C.R. (Criminal) 345.

7. In view of above and the factual position of the present case, the present petition is accepted and order dated 10.09.2015 (Annexure P/3) passed by learned Judicial Magistrate Ist Class, Faridabad is set-aside.

(SHEKHER DHAWAN)
JUDGE

March 19, 2019

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes