

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

**CRR-553-2018 (O&M)
Date of decision: 12.03.2019**

Abhishek Thaman

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S. Seemar, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Mr. Narender Hooda, Sr. Advocate with
Mr. Sudhir Hooda, Advocate
for respondents No.2 & 3.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 18.12.2017 passed by the trial Court, vide which the application for comparison of the signatures with the disputed signatures appended on the cheque, filed the petitioner-accused was allowed.

Brief facts of the case are that the petitioner has got recorded FIR No.235 dated 06.09.2013 under Sections 420, 120-B IPC at Police Station Jodhewal, Ludhiana with the allegations that he has given a complaint against Mona Aggarwal and Navneet Aggarwal to the

Commissioner of Police, Ludhiana, which was enquired by ACP and ADCP, Ludhiana, in which it was found that they have committed the fraud with the complainant. As per the report of ADCP, after giving the cheque to the complainant, they have stopped the payment from the bank and have committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It is further stated that the accused persons have committed conspiracy and have done fraud of crores of rupees with the Govt. as per the inquiry report and action be taken. On the basis of the same, present FIR was registered.

Learned counsel for the petitioner submits that during the investigation, the accused persons have moved an application for comparison of the signatures on cheque No.177571 dated 12.09.2012 with specimen signatures of applicant-respondent No.2 Mona Aggarwal, from Forensic Science Laboratory, Chandigarh, however, the application was declined by the Illaqa Magistrate vide order dated 21.09.2013 with the observations that since the case is at the stage of investigation, the Court has no power to issue such direction and if an application is moved by the Investigating Officer, the same can be sent to the FSL. Learned counsel further submits that even thereafter, another application was moved for discharge on the same set of allegations and the same was also dismissed vide order dated 05.09.2017. It is submitted that in the meantime, the respondents have already filed CRM-M-30136-2016 praying for quashing of the FIR, which is also pending and on the date when the case was fixed before the trial Court for framing of the charge, an application was moved

by respondent Mona Aggarwal for comparison of her signatures with the stands signatures, which the trial Court allowed on the same day, while framing the charge vide impugned order dated 18.12.2017.

Learned counsel for the petitioner has argued that in fact while allowing the said application, the trial Court has committed grave irregularity, as two orders i.e. one framing charge has been clubbed with other order, vide which an application for comparison of the signatures, was decided on the same day. Moreover, the order on application was passed without affording any opportunity of hearing, as the trial Court has not granted time to file reply.

In reply, learned State counsel, on instructions from ASI Kulwant Singh and assisted by learned Senior counsel for respondents No.2 & 3-accused, has submitted that in fact the first application dated 21.09.2013 was dismissed at the stage when the case was under investigation.

Learned Senior counsel for respondents No.2 & 3 has further submitted that the very basis for registration of the FIR is a report submitted by the ACP, Ludhiana dated 29.09.2012, in which an observation is made that Navneet Aggarwal and Mona Aggarwal, by taking the petitioner (who is their old friend) in confidence, has defrauded him and have given him a post-dated cheque by putting signature of Mona Aggarwal from someone else. It is also stated that in this report, there is a reference of some other cases pending against respondents No.2 & 3.

After hearing learned counsel for the parties, I find merit in the

present petition qua the impugned order, vide which the application filed by respondents No.2 & 3 was allowed, summarily without affording appropriate opportunity of hearing to the State or to the complainant-petitioner.

Even otherwise, it is well settled principle of law that an order of framing charge should be a specific and clear order, wherein the trial Court has clubbed two orders i.e. one framing the charge against respondents No.2 & 3-accused with the order, allowing the application for comparison of signatures of Mona Aggarwal with her standard signatures through FSL, Chandigarh.

In view of the above, this petition is partly allowed. The matter is remanded back to the trial Court to re-decide the application for comparison of the signatures of Mona Aggarwal on the aforesaid cheque, after affording an opportunity of hearing to the State as well as to the complainant-petitioner.

The parties are directed to appear before the trial Court on 12.04.2019, who will decide the application afresh.

Disposed of, accordingly.

12.03.2019
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No