

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3605-2018

Date of Decision: 19.02.2020

Sonia Sharma

.. Petitioner

Vs.

Deepak Dawar

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. A.P. Kaushal, Advocate for the petitioner.

None for the respondent.

...

Manoj Bajaj, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 02.11.2016 (Annexure P-5) passed by Ld. JMIC, Ludhiana, whereby her application to examine the hand writing expert has been declined in Complaint No.6711 instituted on 25.09.2014 and order dated 26.10.2017 (Annexure P-7) passed by ld. Addl. Sessions Judge, Ludhiana, vide which her revision against the the aforesaid order has been dismissed.

Learned counsel for the petitioner contends that trial Court has committed a serious error in declining the application moved by the accused/petitioner for examining the handwriting expert to prove that the alleged signatures of the petitioner on the cheque in question were forged. He has pointed out that in her explanation under Section 313 Cr.P.C. (Annexure P-3), it has been mentioned by the petitioner/accused that there was no liability against her, therefore, there is no question of issuance of any cheque in favour of the complainant. According to him, the complainant forged the signatures and used the instrument for his wrongful gain. He submits that the complainant has committed the offence of cheating and forgery. In support of his argument, he has invited the

attention of the Court to the said statement Annexure P-3.

During the course of hearing, it was not disputed by the learned counsel for the petitioner that the cheque in question was dishonoured only on account of insufficient funds and not on account of variation in the signatures of the account holder. He further concedes that after dishonour of the cheque on 23.08.2014, no complaint whatsoever was made by her to the police or to the Magistrate.

He has further produced the reply dated 19.09.2014 (Ex. C-5) sent by the petitioner, in response to the statutory notice sent by the complainant. It is contended that the issue of forgery of the cheque was conveyed to the complainant at that very time and the relevant portion of the reply reads as under:

“It seems that your client has forged the signature and rest of the body of the cheque and used the same for wrongful gain to himself and wrongful loss to my client. Your client has committed the offences of cheating and forgery.”

He has placed reliance upon the law laid down by Hon'ble Supreme Court in case titled as **“Kalyani Baskar Vs. M.S. Sampooram”** 2007 (1) RCR (Criminal) 311, wherein it has been held as under:

“Section 243 (2) is clear that a Magistrate holding an inquiry under the Criminal Procedure Code 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 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. 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 courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Criminal Procedure Code without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243 (2) Criminal Procedure Code refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.”

A perusal of the above observations would reveal that the same are not applicable to the facts and circumstances of the case in hand, as in the cited case, cheque in question was drawn from an individual account,

but was signed jointly by husband and wife. Apart from it, initially an

application was filed on behalf of the accused therein under Section 245 Cr.P.C. seeking their discharge. However, at that time, no indulgence was shown by the trial Court and application was dismissed. The issue was again raised by the accused when the complainant examined the witnesses including the bank officials. It is apparent that in that context Hon'ble the Supreme Court proceeded to accept the plea of the accused. However in the present case, admittedly no complaint whatsoever was made by the accused against the complainant and the issue of forging of cheque has been raised for the first time when the trial is at the fag end.

A perusal of the impugned order reveals that the trial Court has carefully examined the issue and placed reliance upon the judgments passed by Hon'ble Rajasthan High Court in case titled as ***Mukesh Kumar Gandhi Versus Seema Devi and Others, 2015 (5) R.C.R. (Criminal) Page 742 and of Karnataka High Court in H.M Satish Versus B.N. Ashok, 2007 (5) R.C.R. (Criminal) Page 516.***

The impugned judgment passed by the trial Court does not suffer from any illegality and impropriety.

In view of the above, no interference is warranted.

Consequently, petition is dismissed.

19.02.2020
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No