

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

(Sr. No. 134)

CRR No. 651 of 2020

Date of decision : 04.03.2021

M/s Shri Om Poultries and another

.....Petitioners

Versus

M/s Dang Poultries

.....Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Deepak Sharma, Advocate, for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The matter has been taken up through video conferencing.

Through the present petition challenge is made to the order dated 28.01.2020 passed by the Additional Sessions Judge, Ambala (hereinafter referred to as – the Appellate Court) through which the petitioners' application filed under Section 391 Cr.P.C. for the grant of permission to examine handwriting and fingerprint expert was dismissed.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the respondent filed a complaint before the Trial Court under Section 138 of the Negotiable Instruments Act, 1881 (for short – the Act) through which it was alleged that the petitioners had been purchasing poultry feed from the complainant and for such purchase had issued, in favour of the complainant, a cheque dated 21.03.2016 for Rs.11,43,150/-. Such cheque, on presentation, was dishonoured with the remarks “funds insufficient”. Thereafter, the complainant had sent a legal notice to the petitioners to pay the cheque

amount but when the petitioners failed to respond to the same, the complainant filed his aforesaid complaint.

After the complainant had led its evidence, the petitioners filed an application before the Trial Court seeking the appointment of a handwriting and fingerprint expert to compare the signatures on the cheque in question with the admitted signatures of the accused-petitioners. Such application was opposed by the complainant on the ground that the cheque in question had not been returned by the bank on the ground of difference in signatures but for insufficient funds and that the application has been filed by the petitioners only to delay the proceedings as during the entire trial which has taken place prior to filing of such application no such objection had been raised by the complainant.

The Trial Court after holding that the cheque in question had been dishonoured for want of funds and not returned back for difference in signatures as also relying on a judgment of Delhi High Court in ***S. Minz Vs. Madhu Bala Gupta 2013(1) CCC 708***, dismissed the petitioners' application with costs.

The petitioners did not challenge the above order of the Trial Court and thereafter continued with the proceedings before the Trial Court, leading to the passing of the final order through which the complainant's complaint was allowed resulting in the sentencing of the petitioners for imprisonment for a period of one year with a further direction to the petitioners to pay to the complainant the cheque amount with interest at the rate of 9% per annum.

The petitioners challenged their conviction and the order of

sentence passed by the Trial Court by way of an appeal and while the same was pending another application was filed before the Appellate Court for seeking permission to lead additional evidence to examine a handwriting and fingerprint expert. Such application was dismissed primarily for the reason that the same prayer made by the petitioners already stood rejected by the Trial Court through an order which had attained finality. The Appellate Court was further of the view that a handwriting and fingerprint expert cannot be permitted to be examined only for the reason that an employee of the concerned bank, while appearing before the Trial Court as a defence witness, had stated that there was some difference in the signatures on the cheque in question with the admitted signatures of the petitioners as such witness was not an expert witness and that the bank had not returned the cheque in question on account of difference in signatures but the same had been dishonoured for want of sufficient funds in the petitioners' bank account.

Learned counsel for the petitioners submits that after DW1-Surjit Kaur, Assistant Manager, Central Bank of India, Chandigarh had deposed before the Trial Court that there was some difference in the signatures on the cheque in question with the petitioners' admitted signatures, the Appellate Court should have permitted the petitioners to lead additional evidence as such opinion would have gone to the root of the matter.

An application for appointment of a handwriting and fingerprint expert had been filed by the petitioners before the Trial Court which application was dismissed on the ground that the cheque in question had not been returned by the bank on account of difference in signatures but on account of insufficient funds as also by relying on the law laid down by the

Delhi High Court in *S. Minz's* case (supra) wherein it has been held that when a cheque is not returned on the ground that signatures are not tallying no purpose would be served in sending the same to an expert for comparison of the signatures thereupon with the admitted signatures of the signatory on the cheque. Such order of the Trial Court was passed much before its final decision in the petitioners' trial but the same was not challenged by the petitioners. Thus, it attained finality inter-se parties.

In view of the above and for the reason that the petitioners seek to get the signatures on the cheque in question referred for opinion of a handwriting and fingerprint expert on the basis of a statement of a defence witness who, admittedly is not an expert witness as also because of the findings returned by the Courts below that the petitioners, through the applications in question are adopting dilatory tactics, no merit is found in the instant petition.

Dismissed.

The Appellate Court is directed to finally adjudicate upon the petitioners' appeal within one month from the date of receipt of a copy of this order.

04.03.2021

sunil yadav

**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No