

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

CRR-389-2021(O&M)

Date of decision:-31.3.2021

M/s Sri Ganesh Enterprises, Bathinda and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Dr.Rau P.S. Girwar, Advocate
for the petitioner.

H.S. MADAAN, J.

Case taken up through video conferencing.

This revision petition is directed against order dated 9.3.2020 passed by Judicial Magistrate Ist Class, Bathinda vide which the application moved by accused for sending the cheque for chemical test to FSL to determine/ascertain the age of ink and writing of the cheque was dismissed.

Briefly stated, the facts of the case are that complainant Avinash Kumar Goyal had filed a complaint under Section 138 of Negotiable Instruments Act against accused M/s Shri Ganesh Enterprises; accused was summoned, served with notice of accusation and trial against accused proceeded. The complainant concluded his

evidence. Thereafter, the accused was examined under Section 313 Cr.P.C. and the case was fixed for defence evidence. During the course of defence evidence, the accused filed an application under reference on the plea that complaint is based upon manipulated cheque, which was never issued by accused to complainant, rather it was misappropriated by the complainant from the office of accused and for proper adjudication of the controversy, the cheque be sent to FSL for examination to determine/ascertain the age of ink and writing of the cheque.

The application was resisted by the complainant contending that the application had been filed as a dilatory tactics; that the accused had not denied his signatures on the cheque in question, therefore, there was no occasion to send the cheque to determine the age of writing; that accused had not taken any plea that writing of the cheque was in different ink. Furthermore, in an application moved, the accused had taken plea that the cheque has been obtained by the complainant as security. As a matter of fact, the accused had been taking different pleas from time to time in the instant case.

The trial Magistrate after hearing arguments had dismissed the application. For ready reference, the operative part of the order is being reproduced as under:

After considering the contentions of ld counsels for parties and scrutinizing the record available on file, I am of the considered opinion that present application filed by accused sans merit. First of all, there is no cogent material on file to show that the cheque in question is old one and it has not been issued by accused in the year 2018 to the complainant. The accused through his lengthy plea recorded in statement under Section 313 Cr. P.C.

has not explained the circumstances in which cheque in question came into the possession of complainant. He simply stated that the complainant misappropriated his cheque kept in the office. Complainant CW1 in his cross-examination on 20.09.2019 has denied the suggestion of ld defence counsel that he misappropriated the cheque of accused by stealing the same from his office. The accused throughout the proceedings in the present case has not denied his signatures on the cheque in question and he has not stated anywhere the reason for keeping his blank signed cheque in the office. The accused has not disclosed any date or period on which the cheque in question was allegedly stolen by complainant nor he has produced any copy of complaint or application ever moved to police against the complainant for alleged theft of cheque in question. The accused neither in his plea nor in the present application has stated any date or period of issuance of cheque book to which the cheque in question belongs. He simply stated in the present application that the cheque is old. Therefore, the accused could not give any plausible reason for sending the cheque in question for chemical test to determine the age of ink and writing of cheque in question. In view of these facts and record available on file, it is apparent that the facts of the present complaint are entirely different from that of the above mentioned judgment cited by learned defence counsel during arguments and such findings of referred judgment are not applicable to the present case.

In view of the above detailed discussion, it is concluded that the accused could not give any plausible reason for sending the cheque in question for chemical test to determine/ascertain the age of ink and writing of the cheque. Application in hand stands dismissed, accordingly.

Feeling aggrieved by such order, the petitioner has knocked at the door of this Court by way of filing the present revision petition.

I have heard learned counsel for the petitioner besides going

through the record.

The impugned order passed by the Court below is detailed and well reasoned. The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the order passed by a Court below or the same is perverse and not otherwise. The impugned order does not appear to be suffering from any illegality or infirmity much less apparent on the face thereof. The conclusion drawn by the trial Magistrate is certainly not perverse, arbitrary or against settled judicial position. There is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

Finding no merit in the revision petition, the same stands dismissed.

31.3.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No