

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

**CRM-M-9327-2022
Reserved on: 08.03.2022
Pronounced on: 14.03.2022**

SUDHIR KUMAR

...Petitioner

Versus

PADAM SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Mr. Randhir Singh Hooda, Advocate for the petitioner.

VINOD S. BHARDWAJ. J.

1. The present petition raises a challenge to the order dated 01.12.2021 passed by the Judicial Magistrate First Class, Sohna, Gurugram in case No. NIA/14/2017 titled as “*Padam Singh versus Sudhir Kumar*” filed under Section 138 read with Section 141 and 142 of the Negotiable Instruments Act and under Sections 406 and 420 IPC as also the order dated 18.01.2022 passed by the Additional Sessions Judge, Gurugram dismissing the revision petition filed by the petitioner on an application for seeking permission to engage the Hand Writing Expert.

2. Learned counsel for the petitioner has impugned the said orders passed by the Courts below whereby the application of the petitioner for appointment of a Hand-Writing Expert to obtain expert opinion about writing on the cheque in question was dismissed.

3. Learned counsel has argued that the respondent-complainant had based his complaint alleging therein that the petitioner had issued the

cheque in question on 24.10.2016 for an amount of Rs.5,00,000/- in discharge of his liability. As a matter of fact, the petitioner had never issued the said cheque nor there was any liability to be discharged by him. It is argued that the husband of the petitioner and the respondent were doing business together and it was at the said relevant period of time that the petitioner gave the cheque to the respondent as a security for their mutual transactions and business of property dealing. It is contended that the cheque in question was not signed by the petitioner and had been handed-over as a blank cheque. There was no legally enforceable debt.

4. I have heard learned counsel for the petitioner and have gone through the pleadings of the case and the documents appended therewith.

5. A perusal of the order passed by the Judicial Magistrate First Class, Sohna, District Gurugram shows that the following reasons have been recorded by the learned Judicial Magistrate, First Class, Sohna for dismissing the application preferred by the petitioner.

“4. File perused. Present application is filed at the stage of evidence of defence evidence being last opportunity. In the present application, applicant has claimed that there are difference in writing. But there are no such specific denial of accused regarding his signature over cheque in question. Statement of accused under Section 313 of Cr.P.C. was recorded in which it is claimed by accused that he has issued cheque in question for security purpose and now no debt is pending qua accused. When signature over cheque in question has not

specifically denied then there is no question for appointment of handwriting expert to compare the handwriting over cheque in question. In M/s Sebro Machine Tools Pvt. Ltd. case (supra) our Hon'ble High Court has held that:

“dishonour of cheque-Handwriting expert-petitioner admitted signature but disputed the handwriting and ink used on blank cheque given application for examination of handwriting expert and for the report of FSL to be rightly dismissed.”

In view of finding of our Hon'ble High Court it is clear that when accused has admitted his signatures over cheque in question then there is no ground for taking the report of handwriting expert regarding handwriting over disputed cheque. Hence, there is no ground in the application and same is hereby dismissed.”

6. Further, the arguments of the petitioner were also noticed by the Lower Appellate Court and upon consideration thereof, it was decided as under:-

“11. After hearing the arguments and after perusing the case file, ultimately this court has arrived at the conclusion that application in hand deserves dismissal. In the present case, it is the case of the revisionist that he had been throughout denying his signatures on Cheque Ex.C1 having not been issued by him.

12. Admittedly, no defence evidence has been led in the present case despite the fact that accused has already availed twelve effective opportunities for leading evidence in defence but accused has failed to examine even a single witness in defence till 22.09.2021 despite last opportunity which indicates

that there is merit in the arguments advanced by the learned counsel for respondent that the applicant is interested only in delaying decision of the complaint. A good reason must also be shown as to why the evidence was not produced during availing sufficient opportunities for defence evidence and when it was the last opportunity, then present application was moved.

13. There is hardly any case made out to show that the evidence sought to be produced at this stage eluded the applicant earlier despite exercise of due diligence. It appears to be a crude attempt on the part of the applicant to undo the findings recorded by the learned trial Court. Further more, there is no denial of accused regarding his signatures over the cheque in question and accused in his statement recorded under Section 313 Cr.P.C has specifically stated that he had issued the cheque for security purpose. It is not the plea of the accused that cheque was not signed by him whereas it is the stand of the accused that cheque was given for security purposes. When there is no dispute Sudhir Kumar Vs. Padam Singh regarding signatures of accused over the cheque in question, then question of appointment of handwriting expert to compare the handwriting over cheque in question does not arise.

14. The evidence which is required to be led was very well within the knowledge of the applicant at the time of defence evidence. No doubt the court is empowered to take any evidence if it is so required for the just decision of the case but the applicant-revisionist has not been able to establish that notwithstanding the exercise of due diligence, the evidence now sought to be produced was not within the knowledge of the applicant-revisionist or could not after the exercise of due diligence be produced by him when the trial was going on. If such applications are allowed there will be no end to opportunities for evidence.

7. A perusal of the aforesaid orders clearly shows that the petitioner was granted an opportunity to lead defence and as many as 12 effective opportunities have been granted by him. Despite, he failed to examine even a single witness in defence till 22.09.2021 when last opportunity was given to him. The petitioner has failed to assign any reason why no such attempt was made by him when he was granted opportunity for the same.

8. Apart therefrom, the petitioner never denied his signatures over the cheque in question in the statement under Section 313 Cr.P.C and instead, the affirmative case set up by the petitioner is that the said cheque had been issued for security purpose. The argument thus sought to be raised before this Court is not pleaded by the petitioner in his defence. The petitioner having admitted his signatures on the cheque in question, the subsequent issue as to who filled up the cheque is to be examined at the time of final adjudication. The submission raised before this Court is not made out in the evidence and is thus an after-thought and is apparently intended to delay the proceedings before the trial Court.

9. The impugned orders do not suffer from any illegality, irregularity, perversity or result in failure of justice by non-examination of the Hand-Writing Expert in the facts of the instant case. Learned counsel for the petitioner has failed to refer to any provision in law as per which the handwriting on cheque must necessarily be that of the signatory or to any judgment that would hold that once the signatures on cheque are admitted, filing of the cheque in a different handwriting itself would be a sufficient ground to rule against a cheque having been issued in due course. The entire evidence has to be seen in light of the defence taken in Section 313 Cr.P.C.

Where the plea raised in the application is not likely to advance any apparent interest of justice and is an evident attempt to delay the culmination of the proceedings, such an endeavour needs to be checked.

10. In view of the facts noticed above, the instant petition is without any merit and the same is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

March 14, 2022
Vishal sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No