

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11117 of 2019

Date of Decision: 12th July, 2022

Hans Raj

... Petitioner

Versus

Pawan Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Anuj Dewan, Advocate for the petitioner.
Mr. Munish Puri, Advocate for the respondent.

AVNEESH JHINGAN , J.(Oral)

This petition under Section 482 Cr.P.C. is filed seeking quashing of order dated 26.2.2019. The application of the petitioner for granting permission to handwriting expert to take the photographs of the documents placed on the court file and for giving his report regarding the handwriting of the said documents was dismissed.

Brief facts are that on dishonouring of cheque issued by petitioner, bearing No. 280213 of Rs.2 lakhs drawn on State Bank of India, Pathankot, with the remarks 'insufficient funds', the respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). The petitioner (accused) took a defence that blank signed cheque given to one Subhash for securing the loan advanced by him to petitioner was misused. Instead of returning the cheque to the petitioner, it was handed over to the complainant. The stand was that no debt or other liability was due.

An application filed by the petitioner under Section 311 Cr.P.C. was partially allowed vide order dated 12.11.2018. Second

application under Section 311 Cr.P.C. was dismissed. Thereafter, a third application was filed which was dismissed on 26.2.2019. Without disclosing the facts of filing of earlier applications, permission was sought for the hand writing expert to take photo of the documents and to give his report. The application was rejected, hence the present petition.

Learned counsel for the petitioner submits that the trial court erred in dismissing the application. The argument is that court cannot determine whether the evidence sought to be adduced is relevant or not. Further submission is that though the cheque was signed by the petitioner, the details have not been filled by him.

Learned counsel for the complainant submits that the petitioner is adopting delaying tactics. He further submits that the petitioner is not denying that the cheque bears his signatures.

The contention raised by learned counsel for the petitioner is noted to be rejected. The presumptions under Section 118 and 139 of the Act are in favour of the holder of the cheque but are rebuttable. The probable defence taken by the accused shifts the onus. In the case in hand, a defence was taken by the petitioner that the cheque given to Subhash for security was misused by the complainant. The signatures on the cheque are not being disputed, the only issue is that the cheque was not filled by the petitioner.

Filling of the amount or other particulars in the cheque by the payee would not invalidate the cheque. Reference in this regard be made to the decision of the Supreme Court in **Bir Singh v. Mukesh Kumar**, 2019(4) SCC 197, wherein it was held as under:

“38. If a signed blank cheque is voluntarily presented to a payee, towards some paymet, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.”

The prayer made in the application is vague. The permission was sought for handwriting expert to take photographs of the documents placed on the court file and to give his report regarding handwriting of the said documents. The application nowhere specifies writing of which document is to be compared vis-a-vis other documents.

The argument raised that the relevance of evidence sought to be adduced under Section 311 Cr.P.C. cannot be determined by court, is against the settled proposition of law.

In **T.Nagappa v. Y.R. Muralidhar**, AIR 2008 SC 2010, the Supreme Court has held as under:-

“8. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of [Section 243](#) of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all

relevant.”

(emphasis)

The petitioner had already made three applications under Section 311 Cr.P.C., one was partly allowed and two were rejected on the similar ground.

During hearing, a specific query was put to the counsel for the petitioner with regard to relevance of the report of handwriting expert. The contention was that while dealing with application under Section 311 Cr.P.C. even *prima facie* relevance of evidence cannot be considered either by trial court or this Court.

Having failed to show even *prima facie* relevance of evidence sought to be produced and that three applications were already filed under Section 311 the bonafide of petitioner is doubtful.

No case is made out for interference in the impugned order.
The petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

12th July, 2022
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Whether reasoned/speaking	Yes
Whether reportable	No