

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-No.37322 of 2022 (O&M)
Date of decision : September 28, 2022

Balwinder Singh

..... Petitioner

Versus

M/s Aggarwal Finance

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Arav Gupta, Advocate
for the applicant-respondent.

Mr. Manoj Kumar Pundir, Advocate
for the non-applicant-petitioner.

PANKAJ JAIN, J. (ORAL)
CRM-36832-2022

This is an application filed under Section 482 Cr.P.C on behalf
of the applicant for placing on record documents Annexure A-1 to A-6.

For the reasons stated in the application, application is allowed.

The documents marked as Annexures A-1 to A-6 are taken on record.

CRM-M-No.37322 of 2022

By way of present petition filed under Section 482 Cr.P.C.
Challenge has been posed to order dated 20.7.2022 passed by the JMIC,
Yamuna Nagar whereby the application filed by the petitioner-accused for
sending the original cheque and agreement to FSL Madhuban for comparing
signatures of the accused-petitioner has been declined. The petitioner has
been summoned to face trial under Section 138 of Negotiable Instruments
Act, 1881 (for short 'the Act'). The present application has been moved at
the stage of defence evidence.

Learned counsel for the petitioner submits that the petitioner

has a right to rebut the statutory presumptions as contemplated under

Section 118 (a) and 139 of the Act even after having admitted the signatures on the cheque. Reliance has been placed upon the judgment in **T. Nagappa Vs. Y. R. Muralidhar (2008) 5 SCC 633.**

Per contra, learned counsel appearing on behalf of the respondent-complainant has strenuously opposed the prayer so made by learned counsel for the petitioner. He refers to the conduct of the petitioner which is written large on the record of the case. He submits that after availing as many as seventy opportunities, the present application was moved. He thus, contends that the present application is nothing but a ploy to delay the trial further. He further submits that earlier also similar application was moved by the petitioner wherein he prayed for examining the private expert to prove his defence and the same was dismissed by the trial court. He further submits that in view of the fact that the said order remains unchallenged, the present application deserves to be dismissed being not maintainable.

I have heard learned counsel for the parties and have gone through the record of the case.

The defence of the petitioner is that the cheque in question was a security cheque which was misused by the complainant. He thus, wants to submit that the hand writing on the cheque leave was not his and in order to substantiate the said defence the present application has been moved. It has further come on record that earlier the complainant moved an application seeking permission to examine the hand writing expert for comparison of signatures of the accused. In the said application, the accused had taken a positive stand “that the signatures may kindly be ordered to be compared

through FSL, Madhuban (government agency) as private expert tend to favour party calling the said expert.”

It is admitted position that the said application was allowed. The private expert was examined by the complainant though the expert was cross-examined at length and that too with the aid of hand writing expert by the accused.

As per settled law, doors cannot be closed on the face of the accused. He has a right to prove his defence. However, keeping in view the conduct of the accused as noticed hereinabove, in order to balance the equities, the application moved by the petitioner is allowed. The impugned order dated 20.7.2022 (Annexure P-4) is set aside subject to payment of costs of Rs.50,000/- which shall be paid by the accused to the complainant.

Keeping in view the fact that the complaint is pending since July, 2017, the trial court is directed to conclude the trial within a period of two months from today.

The present petition stands disposed off.

(PANKAJ JAIN)
JUDGE

September 28, 2022
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Whether speaking/reasoned	Yes
Whether Reportable :	No