

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

**CRM-M-49013-2022**

**Date of decision : 24.11.2022**

Sunil Likhi

....Petitioner

Versus

Sonia Dhir

...Respondent

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Atul Goyal, Advocate  
for the petitioner.

**PANKAJ JAIN, J. (ORAL)**

The present petition has been filed under Section 482 Cr.P.C. impugning the order dated 23<sup>rd</sup> of September, 2022 (Annexure P-8) whereby the application filed by the petitioner under Section 65 & 66 of the Evidence Act read with Section 391 of the Code of Criminal Procedure, 1973 seeking direction to the bank to produce the original account opening record of the accused *vis-a-vis* cheque in dispute.

2. Mr. Naveen Bawa, Advocate appears and files his Power of Attorney on behalf of the complainant, today in Court. The same is taken on record.

3. Ld. Counsel for the petitioner submits that during the course of trial the petitioner-accused led evidence in defence wherein Harish Kumar, Associate Sales Officer of Indusind Bank, Urban Estate, Focal Point, Ludhiana was examined as DW-1 and he brought copy of the account opening form which was proved as Ex.DW1/A being *per se* admissible

under the provisions of Bankers' Book Evidence Act. However, the photograph of the account holder was not clear and the same was admitted by DW-1 in his testimony wherein he testified as under :-

“...I cannot identified the photograph mark Z1. It is correct that even on photograph Z2 the facial features are not very cleared. It is correct that one cannot make out from photograph mark Z2 as to who is the person. The cheque was not issued by the accused to the complainant in my presence...”

4. He, thus, submits that despite being diligent the defence evidence could not serve the purpose and consequently, the present application was moved before the Appellate Court.

5. Ld. Counsel appearing for the complainant submits that the positive case asserted by the complainant is that it is a cheque which was handed-over by none other than the accused in discharge of his liability and the story being projected w.r.t. the accused not being drawer in terms of Section 7 of the Negotiable Instruments Act is just a ploy to defeat the complaint. He further submits that in case the petitioner was not satisfied with the document produced by DW-1, he had a remedy to move an appropriate application before the Trial Court to direct the witness to bring the original record. Having already been convicted it is too late in the day for the petitioner to move the present application.

6. I have heard counsel for the parties and have gone through the records of the case.

7. It is discernible from the record that the precise defence of the petitioner related to he not being the bank account holder on which the cheque in question was drawn. Admittedly, in order to prove his defence, he summoned the record and the same was produced on record as DW1/A however, the said exercise proved to be futile. The accused has a right to fair trial and definitely needs to be granted an opportunity to prove his defence.

8. While allowing this petition, this Court is not commenting upon the veracity/legality of such defence and truthfulness thereof. Keeping in view the right of the petitioner to prove his defence, the present petition is allowed.

9. The parties shall appear before the Trial Court on the next date of hearing i.e. 7<sup>th</sup> of December, 2022 and produce a copy of this order. The Trial Court shall grant one opportunity to the accused to get the bank officials summoned along with relevant record.

10. Keeping in view the fact that the appeal is pending for the last six years, the Appellate Court is directed to expedite the disposal of the same and to dispose off the appeal finally within three months thereafter.

**November 24, 2022**  
**Dpr**

**(PANKAJ JAIN)**  
**JUDGE**

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