

(203) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45064-2019(O&M)
Date of Decision:13.06.2022

Rajesh Rana

... Petitioner

Versus

Parmod Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ramesh Hooda, Advocate
for the petitioner.

Mr. Arun Bansal, Advocate for the complainant.

JASJIT SINGH BEDI, J.

CRM-11460-2022

The applicant-petitioner has filed this application for placing on record a short affidavit along with annexures.

For the reasons mentioned in the application, the same is allowed and short affidavit along with annexures are taken on record.

CRM-M-45064-2019

The prayer in this petition is for quashing of the order dated 24.07.2019 (Annexure P-4) passed by the learned Judicial Magistrate, 1st Class, Karnal in Criminal Complaint No.425 dated 10.10.2014/20.02.2016 under Sections 138/141/142 of the Negotiable Instruments Act titled as Parmod Kumar Versus Welkin Agro Industries Pvt. Ltd. and others, whereby

an application filed by the petitioner/accused to examine the fingerprint and handwriting expert has been dismissed.

2. The brief facts of the case are that the respondent/complainant filed the above mentioned complaint under the Negotiable Instruments Act, 1881 against Welkin Agro Industries Pvt. Ltd., Rajesh Rana and Narinder Kumar on the allegation that Rajesh Rana and Narinder Kumar were the Directors of Welkin Agro Industries Pvt. Ltd. and the petitioner issued a cheque of Rs.15 lakhs in favour of the respondent dated 31.08.2013, which was dishonoured on account of “Insufficient Funds”.

3. The respondent/complainant was examined as CW1. In cross-examination a suggestion was put to him that in fact a blank cheque was given by the petitioner to one Subhash Chand, who was a commission agent in Grain Market, Nighdu as a security to supply paddy as the company is running a rice mill but that cheque was misused by the complainant in connivance with Subhash Chand and the petitioner/accused had never met with the respondent/complainant and he had no liability towards the respondent. It was also alleged that the cheque was not filled up by Rajesh Rana (accused petitioner) though it had been signed by him.

4. The complainant's evidence was closed on 10.07.2019 and the statement of the petitioner under Section 313 Cr.P.C. was recorded on the same day and the petitioner filed an application for calling the fingerprint and handwriting expert for comparing the handwriting in question on the same day.

5. Meanwhile, in the statement under Section 313 Cr.P.C., the petitioner took the stand that the petitioner did not issue the cheque to the

complainant rather the blank signed cheque was given to one Subhash Chand, Commission Agent as security but that was misused by the complainant in connivance with Subhash Chand.

6. The said application for calling and examining the fingerprint and handwriting expert came to be dismissed by the impugned order dated 24.07.2019 (Annexure P-4) passed by Judicial Magistrate, 1st Class, Karnal.

7. The counsel for the petitioner/accused contends that the impugned order dated 24.07.2019 had been passed without considering the mandatory provisions prescribed under Sections 243 Cr.P.C. and 247 Cr.P.C. The application for leading defence evidence could be rejected only if it was made for the purpose of vexation, delay or for defeating the ends of justice. No such finding has been recorded by the learned Trial Court. The said application had been dismissed only on the ground that since the accused had admitted that he had signed the cheque, the deposition of the expert witness was not required to compare the writing on the body of the cheque in question with handwriting of the signatory. He also referred to an order of this Court in another complaint filed against the petitioner, where a similar prayer had been disallowed but this Court vide order Annexure P-5 had quashed the order of the Trial Court.

8. The counsel for the respondent/complainant on the other hand filed an affidavit. The thrust of the said affidavit was that the proceedings under Section 138 of the Negotiable Instruments Act had been pending for the last about eight years and the petitioner was making all attempts to stall the same in one way or the other. He had initially approached the Company Court and the said application was dismissed and that fact had not been disclosed to

this Court. Reference was made to orders Annexure R-1 and R-2. He also referred to orders Annexure R-3 and R-4, wherein he had agreed to make the due payment but subsequently did not make the payment. It was lastly submitted that it is the admitted case of the petitioner that he had issued the signed cheque to one Subhash Chand as security which had been misused by the said Subhash Chand in connivance with the present complainant. Once the issuance of a signed cheque had been admitted, in light of the judgment of the Hon'ble Supreme Court in **Bir Singh Versus Mukesh Kumar, 2019 (2) RCR (Criminal) 1**, the application of the petitioner has been rightly declined.

9. I have heard counsel for both the parties at length.

10. The application in question had been moved for examining the fingerprint and handwriting expert to compare the handwriting of the signatures and the handwriting in which the remaining particulars of the cheque were filled in as the ink used in affixing signatures on the cheque in question was different from the ink used in filling the remaining particulars of the cheque in question. The response of the complainant therein was that a complaint was filed on 10.10.2014 and the application had been moved after almost five years on 24.07.2019 with a view to delay the trial one way or the other.

11. Before proceeding further, it would be necessary to examine the judgments of the Hon'ble Supreme Court and this Court on the issue as cited by the learned counsel for the petitioner/accused.

The Hon'ble Supreme Court in **Kalyani Baskar Versus M.S. Sampooranam, 2007(1) RCR (Criminal) 311**, held as under:-

“11. Section 243 (2) is clear that a Magistrate holding an inquiry under the Criminal Procedure Code in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Criminal Procedure Code without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Criminal Procedure Code refers to a stage when the prosecution closes its evidence after examining the

witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.”

(Emphasis supplied)

The Hon’ble Supreme Court in **T. Nagappa Versus Y.R.Muralidar, 2008(3) RCR. (Criminal) 926**, held as under:-

3. On or about 1.8.2006, the appellant filed an application under Section 243 of the Code of Criminal Procedure wrongly mentioned as Section 293 of the Code of Criminal Procedure, 1973 for referring the cheque in question for examination by the Director of Forensic Science Laboratory for determining the age of his signature, contending that the respondent had obtained a signed cheque from him in the year 1999 as a security for a hand loan of Rs. 50,000/- which had been paid back, but instead of returning the cheque, the same has been misused by entering a huge amount, which he did not owe to the appellant.”

7. When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it.

An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognised by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, which reads as under :

"Section 243 - Evidence for defence. - (1) ..

(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice."

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 bonafide 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.

9. The learned Trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of Section 20 of the Negotiable Instruments Act. The very fact that by reason thereof, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bonafide.

The issue now almost stands concluded by a decision of this Court in Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.), 2007(1) RCR (Criminal) 311 : 2007(1) RAJ 68 : [(2007)2 SCC 258] (in which one of us, L.S. Panta, J., was a member) wherein it was held :

"12. Section 243(2) is clear that a Magistrate holding an inquiry under Criminal Procedure Code in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for

the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

10. However, it is not necessary to have any expert opinion on the question other than the following :

"Whether the writings appearing in the said cheque on the front page is written on the same day and time when the said cheque was signed as "T. Nagappa" on the front page as well as on the reverse, or in other words, whether the age of the writing on Ex.P2 on the front page is the same as that of the signature "T.Nagappa" appearing on the front as well as on the reverse of the Cheque Ex.P2 ?"

(Emphasis supplied)

The Karnataka High Court in **Shri. Ishwar Versus Sri. Suresh,**

2010(2) R.C.R. 345, held as under:-

"1.Petitioner is facing criminal charge before the J.M.F.C., Ramdurga in C.C. No. 160/2007 (P.C. No. 35/2007) for an offence punishable under Section 138 of the Negotiable Instruments Act (Act for short). It is alleged that, the petitioner issued a cheque in favour of the respondent for a sum of Rs. 7,20,000/- on 23/03/2007, which on deposit in

Bank was returned unpaid. A complaint was filed by the respondent under Section 200 Criminal Procedure Code alleging that the petitioner has committed an offence under Section 138 of the Act. Complainant deposed as P.W. 1. Two other witnesses were examined as P.Ws. 2 and 3. The case was posted for examination of the accused under Section 313 Criminal Procedure Code. The petitioner, who is the accused, has filed an application for referring the cheque in question for an examination by an expert contending that he had issued a blank cheque and a bond paper to the complainant, who has written thereon the amount etc. according to his choice and the writings in the cheque and the bond are not in his handwriting i.e., the date, the figures, etc., which have been written in a different ink and hence it is very much necessary to send the cheque and the blank bond paper for the opinion of the hand writing expert. According to the accused, the cheque and the bond paper have been mis-used by the complainant by entering a huge amount which he did not owe to the complainant. Objections were filed by the complainant to the application of the accused, wherein it was contended that the accused in order to return the hand loan has issued the cheque for Rs. 7,20,000/- in favour of the complainant and that the accused has also executed a promissory note and it is in order to discharge the hand loan, the cheque was issued, which was returned with an endorsement of the Bank "Insufficient funds". In the circumstances, it is not necessary to send the cheque and the bond paper for the opinion of the handwriting expert. Learned Magistrate, for the reasons recorded by him, did not find merit in the application and dismissed the same. While dismissing the application it was observed that, the accused has admitted the signature on the cheque and hence naturally the burden is, shifted on the accused to disprove the version of the complainant and by

merely sending the cheque or the document to the hand writing expert, no purpose will be served. After making a reference to the decisions of this Court and that of the Madras and Kerala High Courts, it was held that, it is not necessary to send for examination the cheque by a hand writing expert, in view of admitting of the signature on the cheque.

*** ***** *****

13. Keeping in view the prima facie facts and record, it has to be held that, both the Trial Court and Revision Court, by dismissing the application, have acted illegally. When the case of the accused is that, his cheque has been mis-used, though the presumption under Section 118 (a) and 139 of the Act can be raised, still an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. Denying of the opportunity, is illegal. Considering the facts and circumstances of the case, in my opinion, it is necessary to have an expert opinion on the following question.

"Whether the writings appearing in the cheque Ex. P-1 and the promissory note Ex. P-7 have been written on the same day and time, when the cheque and the promissory note was signed as 'I.M. Hadimani 'or in other words, whether the age of 'the writing in Ex. P-1 and 7 is the same as that of the signature 'I. M. Hadimani' appearing on Ex.P-1 and P4 ?"

For the foregoing discussion, I pass the following;

ORDER

- i) Petition is allowed.*
- ii) The impugned orders are hereby set aside.*
- iii) The application filed by the accused in the Trial Court, to refer Exs. P-1 and P-7 to a handwriting Expert is allowed and the Trial Judge is directed to send Exs. P-1 and 7 to Smt. C.V. Jayadevi,*

handwriting Expert, to submit report with regard to the point formulated supra. The cost of the expert, for the time being is tentatively fixed at Rs. 10,000/-, which amount shall be deposited by the accused before the Trial Court within a period of 2 weeks from the date of receipt of a copy of this order.

In view of the disposal of the main matter, the Misc. Crl. 15998/2009 for stay does not survive for consideration.

(Emphasis supplied)

The Bombay High Court in **Baburao Madhavrao Munnemanik Versus Vishwajit Pratapsing Pradesh and another, 2011(4) R.C.R. (Criminal) 40**, held as under:-

“5. During the course of submissions, learned counsel for the petitioner placed reliance on the observations of the Apex Court, in the matter of T. Nagappa v. Y.R. Muralidhar”, 2008(3) RCR (Criminal) 926 : 2008(4) Recent Apex Judgments (R.A.J.) 592 : 2008 (5) SCC 633. The Apex Court, in the said judgment, has referred the observations in the matter of "Kalyani Baskar v. M.S. Sampooram", 2007 (1) RCR (Criminal) 311 : 2007(1) Recent Apex Judgments (R.A.J.) 68 : (2007)2 SCC 258, which read thus :-

"12. Section 243 (2) is clear that a Magistrate holding an inquiry under Criminal Procedure Code in respect of an offence triable by him does not exceed his powers under Section 243 (2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of

the respondent and if the document viz. The cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

6. The present petitioner, though does not dispute signature on the cheques in question, yet according to him the said cheques were given to respondent No. 1 by way of security, which are misused by him by filing up the places in the cheque conveniently so as to suit his case. It is further urged that it is imperative to send the cheques in question to the expert so as to determine the age of the ink used for signature and age of the ink used to fill up other details. As observed by the Apex Court, in the above referred judgment, for fair trial, this exercise is required to be carried out. In the premise, the application (Exhibit-46) requires to be allowed.

7. Consequently, the petition succeed. The impugned orders are quashed and set aside. The application (Exhibit-46) in STC No. 466/2009 pending on the file of JMFC, Jalna is

allowed. Rule is made absolute as indicated above with no order as to costs.

8. At this juncture, learned counsel for respondent No. 1 requested that considering the age of the trial, time bound programme be given to the trial court to carry out the exercise of sending the disputed cheques to expert and collect the report of the expert. In the premise, the parties are directed to appear before the trial court on 04.05.2011, thereafter, learned JMFC, to refer the disputed cheques to the expert concerned with directions to determine the age of the ink used for signature so also the age of the ink used for filling up of other particulars and call for the report of the expert within 3 months. Learned JMFC is further directed to decide the case in accordance with law, after receipt of the report from expert as expeditiously as possible. Parties to act on the authenticated copy of this order.”

(Emphasis supplied)

The Rajasthan High Court in **Sawai Singh Versus State of Rajasthan, (2014) 42 R.C.R. (Criminal) 341**, held as under:-

“2. The learned counsel appearing for the petitioner submitted that the body of the cheque was filled by the complainant and, hence, it is necessary to send the cheque to the Rajasthan State Forensic Science Laboratory, Jaipur.

4. Furthermore, in the facts and circumstances of the case, the petitioner can always examine hand writing expert in defence to prove his argument that the body of the cheque was filled by the complainant. As until rebutted, presumption is always in favour of the holder of the cheque.

5. Therefore, the present petition is disposed of with the direction that the petitioner, if so advised, may file an application to examine hand writing expert in defence. This Court has no doubt that as and when such an application is filed, the same shall be dealt with and decided by the trial Court in accordance with the provisions of law keeping principle of fair trial into consideration.

(Emphasis supplied)

The Himachal Pradesh High Court in **Raj Kumar Versus M/s**

Ram Krishan & Sons, 2016(3) ILR (H.P.) 416, held as under:-

“2. The Minimal facts as are necessary for the determination of this case are that the respondent filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act (for short the ‘Act’) claiming dishonour of cheque of value of L 2,25,000/-, whereas, the stand of the petitioner was that he in order to maintain the relations and further in order to repose confidence had issued five cheques of L 25,000/- each to the respondent as security. It was further claimed that apart from the defence already taken, the respondent otherwise had interpolated the amount in the cheques and in place of L 25,000/- he had pre-fixed two and thereby converted the amount to L 2,25,000/-.

3. During the course of proceedings, the petitioner filed an application under Section 45 of the Evidence Act for comparison of handwriting of the applicant-accused by Handwriting Expert. This application came to be rejected by the learned trial Magistrate by according the following reasons:-

“4. It may be observed at the outset that the applicant- accused himself admitted his signatures

over the cheque. However, he has claimed that he had filled-up the cheque partially only by writing the amount of Rs.25,000/- in digits. However, the rest of the particulars of the cheque were left blank. In this regard, it may be observed that Section 20 of the Negotiable Instruments Act provides as under:-

“20. Inchoate stamped instruments.- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

5. Therefore, in the present case, when the applicant-accused himself claimed that he had partially filled up the cheque, he thereby gave an implied authority to the complainant to complete the other particulars of the cheque. Therefore, no fruitful purpose shall be served by seeking opinion of the handwriting expert in respect of the writings on the cheque by comparing it with the handwriting of the applicant-accused. When the applicant-accused has admitted his signatures over the cheque and admittedly the cheque i.e. negotiable instrument comes within the category

of inchoate stamped instruments under section 20 of the Negotiable Instrument Act, it would not make any difference if the other particulars of the cheque had been filled up by the complainant, or somebody else.”

*** *** ****

8. That apart, it was only if the Magistrate was of the opinion that the object of the petitioner in moving the application for comparison of the signatures was vexatious and had no relevance in the proceedings could he have refused the permission. But, once this was not the case, then I see no reason why the learned Magistrate ought not to have sent the documents for examination enabling the same to be compared by the Handwriting Expert which would facilitate in arriving at a correct decision.

9. The petitioner cannot be convicted without an opportunity of being given a fair chance to present his evidence and if it is denied then there would be no “fair trial”. After-all “fair trial” includes fair and proper opportunities allowed by law to prove the parties innocence. Adducing evidence in support of the defence is a valuable right. This was precisely what was held by the Hon'ble Supreme Court in Kalyani Baskar v. M.S. Sampooram (2007) 2 SCC 258 which reads thus:-

“12. Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to

rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the

order of the Magistrate is erroneous and not sustainable.”

10. Having said so, the order passed by the learned Magistrate is not sustainable in the eyes of law and is accordingly set aside. Consequently, the application filed by the petitioner is allowed and the cheque in question is directed to be sent for comparison of the handwriting by the Handwriting Expert to be appointed by the learned trial Magistrate.

12. The learned counsel for the complainant/respondent on the other hand referred to the following judgments:-

The Hon’ble Supreme Court in **Sampelly Satyanarayana Rao Versus Indian Renewable Energy Development Agency Limited, 2016(4) RCR (Civil) 487**, held as under:-

“18. In Rangappa v. Sri Mohan, 2010(3) RCR (Criminal) 164 : 2010(3) RCR (Civil) 197 : 2010(3) Recent Apex Judgments (R.A.J.) 415 : (2010) 11 SCC 441 this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post dated cheque is a well recognised mode of payment Goaplast (P) Ltd. v. Chico Ursula D' Souza 2003(2) RCR (Criminal) 131 : (2003) 3 SCC 232.”

The Hon'ble Supreme Court in **Bir Singh's** case (supra), held as under:-

“37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, 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.

39. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

(Emphasis supplied)

The Bombay High Court in **Prabhakar Xembhu Versus Surendra V. Pai and another, 2006(7) RCR (Criminal) 171**, held as under:-

“2. To answer the said question a few facts are required to be stated. The applicant herein is the accused in C.C. No. 412/OA/04/B in which he is being prosecuted by the respondent/Complainant under Section 138 of the Negotiable Instruments Act, 1881 (Act, for short) for bouncing of two cheques in the sum of Rs. 3,35,000/- and Rs. 60,000/- dated 4-12-2003 and 4-7-2004 respectively. The applicant/accused did not deny that he had signed the said two cheques but it was his contention that the body of the cheque or the remaining particulars were not written by him. Likewise, it was his contention that he had not signed the A.D. card of the statutory notice sent to him by the Complainant.

4. The learned J.M.F.C. referred to the case of Lilykutty v. Lawrance, (2003(2) DCR 610) to say that no law provided that the entire body of the cheque had to be written by the drawer and also to the case of K. Bhaskaran v. Shankar V. Balan, (1999 CriLJ 606) to say that once the sender had dispatched the notice by post with the correct address written on it then it is deemed to have been served on the sender unless the sender proves that it was not really served. The learned trial Court also came to the conclusion that it was not material to find out whether the contents of the cheque were in the handwriting of the accused or not. The learned trial Court also felt that the opinion of the handwriting expert would not help the Court to decide on the controversy/dispute between the parties but would only delay the trial of the case and, therefore, proceeded to dismiss the application filed by the accused.

8. On the other hand, Mr. M.S. Sonak, the learned Counsel on behalf of the Complainant, relying on the very same

Judgments has submitted that no purpose would be served by sending the said documents in view of the admitted position in law which makes it immaterial whether the body of the cheque is written by the accused or someone else as long as the cheque has been signed and delivered by the accused himself. Mr. Sonak has referred to a Judgment of this Court in the case of The Vasco Urban Coop. Credit Society Ltd. v. Mrs. Shoba D. Korgaonkar (2005(1) Goa L.R. 452) and has submitted that the Court should not adopt any interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure and that any other interpretation could be proved to lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice, and, also to another observation which states that it could not be ruled out that a cunning accused person may just scribble his signature on the A.D. card that such a notice was not received by the accused. Mr. Sonak has also submitted that the discretion under Section 254(2) is certainly narrower than the discretion conferred on a Court under Section 243(2) of the Code and which discretion being in a warrant case is wider than in a summons case.

9. Section 254 of the Code deals with the procedure when an accused is not convicted in a case triable as a summons case and sub-section (2) thereof provides that the Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any person directing him to attend or to produce any document or other thing.

10. As far as an accused signing a cheque and not signing the body of the cheque is concerned, this Court in the case of Mrs. Shila @ Sudha Manjunath Vernekar v. Mr. Rayaba S. Dessai and another (unreported decision dated

27-1-2005 in Criminal Revision Application No. 29 of 2004) has stated thus :

"It appears that there is preponderance of judicial opinion in favour of the proposition that when a cheque is issued duly signed by the drawer and the holder completes the same in other respects namely as regards the amount due and the date, the presumption would still be available to the complainant/holder unless the accused shows that the said particulars were filled in without the consent of the accused/drawer".

11. The said legal position is based on the principle that in such cases there is a tacit or implied consent by the drawer to fill in the details of the amount and date of the cheque. "I will give you a blank signed cheque" is an expression which we heard very often even before prosecutions under Section 138 of the Act came to be lodged and the said expression signifies the drawer gives authority to holder or payee to complete the cheque in all respects including the amount to be filled in and the date to present it for payment and obtain the payment due thereon. As far as the receipt of the notice by the accused was concerned both the Courts below have placed reliance on the case of K. Bhaskaran v. Sankaran Vaidhyan Balan and another (supra) which lays down the principle that the notice is addressed to the correct address of the drawer of the cheque/accused and is sent by registered post the same is deemed to have received by the addressee. As far as this case is concerned one does not know why the applicant/accused has chosen not to displace the presumption available to the Complainant by virtue of Section 27 of the General Act by examining the postman. But the accused has shown his inclination to examine a handwriting expert.

12. There is no doubt that Section 254(2) of the Code is meant to give a fair opportunity to an accused to defend his case by producing his evidence. That is a basic rule of a fair trial. Nevertheless in a given case it would be the discretion of the trial Court whether the accused should be allowed to produce witnesses in support of his defence. The general rule is that an opportunity should be given to an accused to adduce evidence so as to rebut the evidence led on behalf of the Complainant but that liberty cannot be unfettered so as to prolong the proceedings and the trial Court is always within its discretion to put a stop to it. In a given case it is the overall situation which a trial Court would be required to assess particularly bearing in mind the onus of proof. If no meaningful purpose would be served by allowing the accused to examine witnesses, then the trial Court would be within its discretion to reject the request to summon witnesses. In the case at hand, there is no dispute that the cheques in question were not only signed by the accused but they were written by him as well and not only that they were sent along with a letter dated 4-12-2003. **In a situation like this, no useful purpose would have been served, by sending the said cheques to a handwriting expert; considering the position of law as it stands that in the matter of the body of the cheque not being written by the accused or the A.D. card not being signed by him, still the presumption under the Act would be available in favour of the Complainant.** Moreover, one does not know also as to how long the entire process of sending the said documents and obtaining the opinion would take. Likewise, one also does not know whether at a given time how quickly the handwriting expert would be available to be examined in the case after he gives an opinion. It is common knowledge that the Government handwriting experts remain busy with the Government work entrusted to them and many a time take months if not years

to come and depose in support of the opinion they have given. In this context, it will be interesting to take note of the objects and reasons which compelled Parliament to pass the Amendment Act 55/2002. It was noted by Parliament that the existing provisions in the Act have been found to be deficient in dealing with dishonour of cheques, not only the punishment provided in the Act has proved to be inadequate but the procedure prescribed for the Courts to deal with such matters has also been found to be cumbersome and the Courts are unable to dispose of the cases expeditiously in a time bound manner in view of the procedure contained in the Act as a result of which a large number of cases are reported to be pending in various Courts in the Country. Keeping that in mind the said Amendment Act 55/2002 was passed, inter alia, with a view to expedite the procedure by dispensing with preliminary evidence, by providing special procedure of service of summons, to provide for summary trial, etc. and all this was done with a view to speed up the disposal of the cases. Sending the cheques to the handwriting expert when not required to be sent, would only add to the delay in the cases. It is common knowledge that it is the accused would always tend to gain by delay than anybody else.

(Emphasis supplied)

This Court in **Gurmeet Singh Versus State of Haryana & another, 2012(2) RCR (Criminal) 306**, held as under:-

“7. Admittedly, the petitioner has taken a stand that the cheque was meant for one Sunil Kumar and the same has been misused by the respondent-complainant. However, when the complainant has stepped into the witness box, he was not confronted as per the defence taken by the petitioner, as argued, before the revisional Court as well as

*before this Court. It was never put to the complainant that the cheque in question was meant for Sunil Kumar and he has misused the same. The revisional court has also noticed that the case is fixed for evidence of the petitioner since May 2011 and after availing five adjournments, the instant application was moved. Even there was no suggestion to the complainant that the name and cheque had been filled up by him. **On the other hand, the signatures on the cheque have been admitted by the petitioner. It is well settled that even if the amount, date, and other particulars are filled up by some other person with different ink accused) cannot escape his liability under Section 138 of the Negotiable Instruments Act, 1881, if he has admitted his signatures on the cheque in question.***”

(Emphasis supplied)

The Delhi High Court in **Nand Kumar Jha Versus Mohar Kumar Jha, 2017(1) R.C.R. (Criminal) 533**, held as under:-

“6. It is further submitted that the petitioner moved an application before the Metropolitan Magistrate for sending the cheque to Forensic Science Laboratory in which the petitioner alleged that the amount and date was subsequently written on the cheque. Therefore, the expert opinion was required regarding the age of the cheque signed and the other body of the cheque filled.

7. In support of his contention, learned counsel for the petitioner relied on the pronouncement of Hon'ble Supreme Court in T. Nagappa v. Y.R. Murlidhar, 2008(3) RCR (Criminal) 926 : 2008(4) Recent Apex Judgments (R.A.J.) 592 : (2008) 5 SCC 633.

9. Argument advanced by the learned counsel for the petitioner was that opportunity of rebuttal must be granted to the accused for adducing evidence and the accused is

having a right to defend himself. It was further argued that the petitioner can prove his defence only after getting a report from the FSL regarding the age of the cheque signed and the other body of the cheque filled to ascertain whether the cheques were filled and signed by the same person. It was the consistent stand of the petitioner that the cheques were not filled and signed by the same person. Counsel for the petitioner has relied upon a judgment in the case of T. Nagappa v. Y.R. Muralidhar 2008(3) RCR (Criminal) 926 : 2008(4) Recent Apex Judgments (R.A.J.) 592 : (2008) 5 SCC 633 in which it was observed that it is the accused who knows how to prove his defence and the court being the master of the proceedings must determine as to whether the application filed by the accused under sub-section (2) of Section 243 is bona fide or not. It was further observed that ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc.

10. This Court has already observed in several cases that once a document is referred to FSL or CFSL, it normally takes four to five years in obtaining report. Since the complaint is pending since 2013, sending the cheque in question to the FSL would take another four to five years to bring the complaint for conclusion. In this case, the signature on the cheques is not disputed. Such an approach of the petitioner cannot be appreciated as it would tantamount to further delay of the conclusion of the complaint case. The complaint case was fixed for defence evidence. Therefore, the petitioner cannot get any assistance from the judgment in the case of T. Nagappa (supra).”

(Emphasis supplied)

This Court in M/s Sebro Machine Tools Pvt. Ltd. & others
Versus M/s Jyoti Industrial Corporation, 2022(2) RCR (Criminal) 659,
held as under:-

*“8. Regarding first application the contention of the petitioners was that the cheque in question had been stolen by Mr. Davinder Kalra @ Raju Kalra, proprietor of the complainant Company with the help of unknown person and was misused by hatching a criminal conspiracy with the complainant. Neither the handwriting nor the ink of the cheque matched in any manner. The cheque had been manipulated and fabricated by the complainant. Said Davinder Kalra was unable to explain as to how the cheque, which was a bearer cheque, was presented and how it was crossed and made into an account payee cheque. The complainant even did not know the whereabouts of the employee of the petitioner Company who had handed over the cheque to him. It was submitted that the handwriting as well as ink used in the disputed cheque were admitted by the complainants' witnesses, therefore, it was necessary to send the disputed cheque for obtaining FSL report to clear the doubts. **Learned trial Court while dismissing the application noted that the signatures on the cheque had been admitted by the accused. The petitioner while recording his defence statement under Section 263 (g) had specifically admitted the signatures on the cheque in question. The trial Court relied upon a decision of this Court in Gurmit Singh v. State of Haryana, 2012 (2) RCR (Criminal) 306 wherein it has been held that once an accused has admitted the signatures on the cheque, he could not escape his liability on the ground that the same had not been signed by him. When the blank cheque is signed and handed over, it means that the person signing it has given implied authority to the holder of the cheque to***

fill the blank which has been left while signing the cheque. Moreover, if there was any manipulation/alteration in the cheque by the complainant, there was no explanation as to why the petitioner slept over the matter for such a long period. Further the petitioners had been granted only one effective opportunity vide order dated 01.07.2019 which they had availed of. It was thus concluded that the application had been filed merely to delay the matter. Accordingly it was dismissed with costs of Rs.3000/-.”

(Emphasis supplied)

13. A perusal of the judgments in ***T. Nagappa’s*** case etc. (supra), would clearly establish that when a contention is raised that the complainant has misused the cheque by filling up the body of the same, even in a case, where a presumption can be raised under Section 118(a) or 139 of the Negotiable Instruments Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places burden on the accused, he must be given an opportunity to discharge it.

The complainant will invariably not disclose that the body of the cheque has been filled up by him or at his instance even where the signatures on the cheque has been accepted by the accused. Without doubt, the holder of the cheque has the authority to fill the same and the cheque would be a valid instrument but to start with, the first step available with an accused to rebut the presumption that the cheque had been issued for the discharge of a legally enforceable debt is by examining a handwriting expert to testify that the signatory and the author of the body of the cheque are different persons. Even if the difference in writing is established, the accused will still have to rebut the presumption under the Act, that the cheque is a valid tender and that

he had made the payment to the complainant but despite that fact, the complainant filled up the cheque and presented the same leading to it being dishonoured. On the other hand, if the permission to examine the handwriting expert is not permitted on the ground that the holder has the authority to fill the body of the cheque, then the accused cannot even begin to establish his defence that a cheque issued as security has been filled up by someone other than him and misused. Thus, it would be unfair to shut out the defence of the accused at the threshold by not allowing the examination of the cheque in question by a handwriting expert.

14. So far as the judgments of the Hon'ble Supreme Court in ***Bir Singh's*** case (supra) and ***Sampelly Satyanarayana Rao's*** case (supra) are concerned, those judgments do not deal strictly with the issue of the examination of the cheque by a handwriting expert. They only reiterate the settled position of law that the signatory of the cheque need not fill in the body of the cheque for the cheque to be a valid cheque. Thus, these two judgments do not further the case of the complainant in any manner. This Court in **M/s Indo Swiss Time Limited Vs. Umraro & Ors. 1981 AIR (Punjab & Haryana) 213** has held that where there is a conflict between two judgments rendered by Benches of equal strength then the Courts are required to follow the judgment which appears to lay down the law more elaborately and accurately.

15. In my opinion, the judgment in ***T. Nagappa's*** case (supra) lays down the law more elaborately and accurately than the judgments in ***Bir Singh's*** case (supra), which only reiterate the position of law that the

signatory of the cheque need not filled in the body of the cheque for the cheque to be a valid cheque.

16. Keeping in view the aforesaid discussion, I find merit in the present petition. Therefore, the application of the petitioner-accused is allowed and the impugned order dated 24.07.2019 (Annexure P-4) passed by the learned Judicial Magistrate, 1st Class, Karnal in Criminal Complaint No.425 dated 10.10.2014/20.02.2016 registered under Sections 138/141/142 of the Negotiable Instruments Act is hereby quashed.

The petitioner-accused shall examine the handwriting expert as a defence witness within a period of four weeks from the date of receipt of a copy of this order and the Trial Court shall conclude the trial within a period of eight weeks thereafter.

(JASJIT SINGH BEDI)
JUDGE

13.06.2022

JITESH

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