

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-45791 of 2019

Date of Decision: *January 12th, 2022*

Rajni Dhingra

..... PETITIONER(S)

VERSUS

Sanjeev Chugh

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

. . .

PRESENT: - Mr. Bipan Ghai, Senior Advocate, with Mr. Paras Talwar, Advocate, for the petitioner.

Mr. Aditya Jain, Advocate, for the respondent.

. . .

Sant Parkash, J

Through the present petition, petitioners has prayed for quashing order dated 04.09.2019 (Annexure P-4) passed by the Judicial Magistrate 1st Class, Gurugram, whereby an application filed by him for examining handwriting expert in complaint No.CIS 4735/2017 dated 05.04.2017 under Section 138 of Negotiable Instruments Act, 1881 has been dismissed.

The petitioner is accused in aforesaid complaint case pending in the court of Judicial Magistrate 1st Class, Gurugram. Petitioner and one Mrs. Ekta Dhingra lend ₹ 1,50,00,000/- and 2,00,00,000/- for investment purposes, from the respondent – complainant and promised to repay the amount installments alongwith interest @ 24% per annum. Complainant advanced the amount of ₹ 1,50,00,000 to the petitioner in five instalments vide five cheques in the month of February 2014 which were

credited to the bank account of petitioner. Petitioner paid interest @ 24% only till 31.03.2014. The petitioner requested the complainant to receive part payment of ₹ 50 lac and for that purpose, petitioner gave two cheques favouring the complainant, bearing Nos.000049 dated 07.06.2014 and 000007 dated 07.08.2014 for ₹ 25 lac each, drawing on Andhra Bank, Greater Kailash, New Delhi, which were honoured and credited to the bank account of complainant. Complainant alleged that petitioner paid interest only at the rate of 15% per annum till March 31, 2016 and paid 5 lac vide RTGS on August 05, 2016 towards part payment of interest till June 2016 whereafter he stopped paying interest altogether. Complainant insisted the petitioner for repayment whereupon, petitioner gave two cheques favouring the complainant bearing Nos.000032 and 000033 dated 06.02.2017 for ₹ 50 lac each, drawn on Andhra Bank, Greater Kailash, New Delhi, however, on presentation in the bank, they had been dishonoured and returned unpaid by the bank with the remarks 'Payment Stopped by the Drawer'. Complainant served legal notice upon the petitioner. Despite receipt of legal notice, petitioner did not pay any amount to the complainant despite expiry of a period of more than 15 days from the date of receipt of said legal notice and hence, complaint under Section 138 of the Negotiable Instruments Act was filed. After closure of evidence of complainant, statement of petitioner was recorded under Section 313 Cr.P.C. and the case was posted for leading defence evidence.

The petitioner had filed two applications viz. one under Section 315 Cr.P.C. and the other under Section 45 of Indian Evidence Act, 1872 to examine and summon the handwriting expert in her defence.

Though application under Section 315 Cr.P.C. was allowed by the trial court

but application for summoning/examining handwriting expert was dismissed vide the impugned order which has been challenged through the present petition.

Learned counsel for the petitioner has submitted that in order to disprove the charges against her, she wanted to examine handwriting expert. Petitioner had only signed a blank cheque wherein the amount and date was filled by the complainant. The trial court has erred in dismissing her application. Learned counsel has contended that fair trial includes a fair and proper opportunity allowed by law to prove the innocence of the accused. The trial court should have sent the cheque for examination and opinion of the handwriting expert. By denying the said document(s) for examination, the trial court has deprived the petitioner of an opportunity of rebutting it. Lastly, while referring to judgment of the Supreme Court in **Kalyani Baskar (Mrs.) versus M.S.Sampoornam (Mrs.), (2007) 2 Supreme Court Cases 258**, learned counsel has submitted that the Magistrate ought to have taken appropriate steps for obtaining the report of the handwriting expert on the point whether the signature on the cheque is that of the accused and should have proceeded with the trial of the case in accordance with law. Thus, it is a settled law that every possible assistance should be offered by the court when an accused in a complaint case seeks directions to refer a disputed cheque for the opinion of a handwriting expert.

Learned counsel for the respondent has contended that the impugned order is absolutely in consonance with the settled proposition of law. The application filed by the petitioner has been rightly dismissed by the trial court. The Magistrate has exercised his jurisdiction judiciously as the

application filed by the petitioner was with the sole object to protract the proceedings.

I have heard counsel for the parties and perused the record.

A perusal of record reveals that petitioner had admitted his signature on the cheque. It is alleged by the petitioner that he gave only blank cheque by putting his signatures and other particulars were filled by the complainant and that, the cheque was misused by the complainant. This contention deserves to be rejected out- rightly as there is no law that a person drawing the cheque has to be necessarily fill it up in his own handwriting. In the case in hand, petitioner has not denied his signatures on the cheque(s). Once he has admitted his signatures on the cheque, he cannot escape his liability on the ground that the same has not been filled in by him. When a 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 up the blank which he has left. A person issuing a blank cheque is supposed to understand the consequences of doing so. He cannot escape his liability only on the ground that blank cheque(s) had been issued. It is a settled proposition of law that drawer of the cheque gives a blank cheque which is signed by him, to the payee and also gives his consent either impliedly or expressly to the said cheque being filled up in material particulars at a subsequent point in time and presented for payment to the Bank by the drawee.

I am afraid that the judgment relied upon by learned counsel for the petitioner in the case of *Kalyani Baskar (supra)* does not apply to the facts of the present case and can be distinguished inasmuch as the accused, in the aforesaid judgment, disputed her signature and filed an application

under Section 245 Cr.P.C. raising *inter alia* preliminary objections that: 1) the accused had not signed the cheque nor issued it to the complainant; 2) the cheque in question was drawn from the individual account of the accused and therefore, as alleged by the complainant, the appellant and her husband could not have jointly signed and issued the cheque; 3) the signature on the cheque may be sent for expert opinion to ascertain bona fides of the same; and 4) neither the appellant nor her husband owe any debt to the complainant. Contrary to this, in the case in hand, the petitioner has never disputed her signature on the cheque rather admitted the same. In this view of the matter and keeping the settled law on the issue raised in this petition, this Court is of the considered opinion that trial court has rightly dismissed the application of petitioner by holding that there was no ground to send the cheque for forensic examination; and that, defence of the accused that cheque has been misused by the complainant and there was no liability on his part and the cheque in question, are a matter of evidence in the case which are to be proved by the accused.

With the aforesaid discussion, the instant petition fails and is dismissed.

**(Sant Parkash)
Judge**

January 12th, 2022

avin

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No