

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

1.

CRM-M-47859-2017

Date of decision: July 04, 2022

Gurpreet Kaur

....Petitioner

Versus

Balwinder Singh

....Respondent

2.

CRM-M-47853-2017

Gupreet Kaur

....Petitioner

Versus

Balwinder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sherry K. Singla, Advocate for the petitioner
None for the respondent

ARVIND SINGH SANGWAN, J.

By way of this common judgment, this Court shall dispose of CRM-M-47853-2017 and CRM-M-47859-2017 as the same cause of action arises.

Prayer in this petition is for setting aside the order dated 6.9.2017 passed by the Judicial Magistrate 1st Class, Ludhiana vide which an application filed by the petitioner to examine the Handwriting and Fingerprints Expert was dismissed as well as the order dated 20.11.2017 passed by Additional Sessions Judge, vide which the revision filed by the petitioner was dismissed in a complaint under Section 138 of the Negotiable Instruments Act.

Counsel for the petitioner submits that the petitioner has moved an application at the stage of leading his defence evidence to examine the Forensic Science Expert to compare the disputed signatures on the cheque with the standard signatures of the petitioner, who had allegedly issued the cheque.

The application was contested by the complainant that there is no need to examine the Handwriting and Fingerprints Expert as there is a presumption regarding the issuance of the cheque. The trial Court vide impugned order dated 6.9.2017 made the following observations :-

“After giving a thoughtful consideration to the averments of the applicant/accused and respondent/complainant and perusal of the record on the file, this Court is of the considered opinion that the present application has been moved by the applicant for examination of the signatures on the cheque in question from the Handwriting and Fingerprint Expert. Perusal of the file shows that when the accused appeared before this Court and she was served a notice of accusation against the case of the complainant, she never denied her signatures on the cheque in question nor during the cross-examination of the complainant the said plea was taken by the learned counsel for the accused by putting a specific suggestion to the complainant. The only defence regarding denial of her signature on the cheque in question was taken by the accused first time in the present case when she was examined by this Court under Section 313 Cr.P.C. Hence, it is apparent that the plea regarding denial of the signatures of the accused on the cheque in question is an afterthought. Moreover, the cheque in question was dishonoured by the banker of the accused for the reason “Payment Stopped by Drawer”. Even the DW1 Sarabjot

Singh, Assistance Manager of Inudsind Bank did not depose regarding the signatures of the accused on the cheque in question as he proved on record the certified copy of the account opening form of the accused Ex.DW1/A on the file.

Therefore, this Court is of the considered opinion that the contentions raised by the learned counsel for the accused are not tenable and there is no ground for examination of a Handwriting Expert to report on the genuineness of the signatures of the accused on the cheque in question. Hence, the present application stands dismissed. Now, the case is adjourned to 11.10.2017 for defence evidence, subject to last opportunity.”

The petitioner, thereafter, challenged the said order before the revisional Court, which was also dismissed vide order dated 20.11.2017 upholding the findings recorded by the trial Court.

Counsel for the petitioner has referred to the statement of CW1 Balwinder Singh-complainant to submit that a specific question was put to him which he denied by saying that it is wrong to suggest that the cheque in question was not signed by Gurpreet Kaur.

Counsel for the petitioner has further submitted that even the statement under Section 313 Cr.P.C., the petitioner had given an explanation that neither she issued the cheque to the complainant, who is stranger to her nor has given the cheque towards any legal liability and the cheque has been misused after the cheque-book was misplaced and the petitioner has given due intimation to the bank in this regard in advance .

Counsel for the petitioner further submits that the only ground taken by the Courts below is that since the petitioner for the first time has

raised this plea in her statement under Section 313 Cr.P.C. and, therefore it cannot be allowed. Counsel further submits that a specific suggestion was put to the complainant while cross-examined to this effect, which has not been considered by the trial Court.

Counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court passed in **T. Nagappa Vs. Y.R. Muralidhar** 2008(3) RCR (Criminal) 926, wherein with regard to rights of the parties to lead their prosecution/defence evidence, the following observations are made :-

“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 recognized 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 *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."

Counsel for the petitioner further submits that the proposed defence evidence goes to the root of the case and will enable the trial Court to record a cogent findings whether the cheque in question bears the signatures of the petitioner or not and, therefore, the Courts below has adopted a wrong approach by dismissing the application.

There is no representation on behalf of the respondent despite the fact that he was duly served in both these petitions.

In view of the above, both the petitions are allowed and the impugned orders dated 6.9.2017 and 20.11.2017 passed by Courts below are set aside and the trial Court is directed to grant an effective opportunity to the petitioner to examine the Handwriting and Fingerprints Expert regarding his signatures on the cheques, with his standard signatures given in the bank.

July 04, 2022
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No