

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

CRM-M-60684-2022

Date of Decision: 23.12.2022

PAWAN GOYAL

...Petitioner

Versus

ANSHUL GOYAL

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Divyam Singh, Advocate
for Mr. Rakesh Gupta, Advocate
for the petitioner.

HARSH BUNGER, J.

Petitioner assails the direction in order dated 10.10.2022 (Annexure P-7) passed by Judicial Magistrate, 1st Class, Faridabad, passed upon an application filed by the petitioner for sending the original cheques to FSL for obtaining a report from the Forensic Science Laboratory Expert; whereby the petitioner-accused has been directed to bring his own handwriting expert for the purpose of taking photographs and other details of cheque in question.

Succinctly, on 16.02.2019, the respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act before the Court of Judicial Magistrate Ist Class, Faridabad, against the petitioner on the plea that respondent-complainant and petitioner-accused are friends and the petitioner-accused many times borrowed friendly loan from the respondent-complainant. It was stated that in September 2016, petitioner-accused with his brothers namely Rajeshwar Goyal and Satish Goyal came to respondent-complainant's home and expressed financial requirement of

Rs.1,00,00,000/- (Rupees One Crore), however respondent-complainant showed his incompetency of giving said loan. It was further stated that on 23.10.2016, petitioner-accused, his brothers Rajeshwar Goyal and Satish Goyal alongwith a common friend/relative again came to respondent-complainant for loan; when upon the assurance of petitioner-accused and respondent-complainant's friend, respondent-complainant gave Rs. 65,00,000/- (Rupees Sixty Five Lakh) cash after taking it from his some relatives. When demands by respondent-complainant for returning the said amount were not acceded for about 18 months, then a panchayat was convened in the month of March, 2018; where the petitioner-accused accepted that he had received the amount from respondent-complainant and in discharge of his legal liability the petitioner-accused delivered two post-dated cheques in respect of his legal debt i.e. Cheque No. 000165 dated 15.09.2018 for Rs. 35,00,000/- and Cheque No. 000167 dated 15.09.2018 for Rs. 30,00,000/- drawn on HDFC Bank. It is stated that when the respondent-complainant presented cheque No. 000165 dated 15.09.2018 for encashment then the same was dishonoured with the remarks "account closed". Accordingly, respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act and petitioner-accused was summoned.

During the pendency of proceedings under Section 138 of the Negotiable Instruments Act, petitioner-accused filed an application (Annexure P-5) for sending the original cheques to FSL for obtaining a report from the Forensic Science Laboratory Expert in respect of a material alteration in the date of cheque No. 000165 (Ex. C-1). The said application was contested by the respondent-complainant by filing its reply (Annexure P-6).

Judicial Magistrate, 1st Class, Faridabad, vide order dated 10.10.2022 (Annexure P-7) allowed the application (Annexure P-5) filed by petitioner-accused however, by directing him to bring his own handwriting expert for the purpose of taking photographs and other details of cheque in question.

Petitioner has assailed the direction in order dated 10.10.2022 (Annexure P-7) passed by Judicial Magistrate, 1st Class, Faridabad; whereby petitioner-accused has been directed to bring his handwriting expert. Petitioner claims that the original cheques should have been sent to Forensic Science Laboratory Expert for obtaining report regarding material alteration in the date of cheque No. 000165 (Ex. C-1).

I have heard the learned counsel for the petitioner and perused the paper book as well as the impugned order dated 10.10.2022 (Annexure P-7) passed by Judicial Magistrate, 1st Class, Faridabad.

Before dealing with the submission and prayer made by learned counsel for the petitioner, it would be apposite to refer to para 10, 11 and 12 of the petition, which read as under :-

“10. That since a short adjournment was given, therefore, the petitioner had no option but to bring its own handwriting and finger print expert Sh. Satdev Aggarwal before the Ld. Trial Court, who took the photographs of the cheque in question in the court itself. Now the case before the Ld. Trial Court is fixed for 06.12.2022 awaiting report of the hand-writing and finger print expert.

11. That it is relevant to mention here that the Ld. Trial Court has rightly allowed the said application filed by the petitioner but the petitioner has an apprehension that the submission of report of said hand-writing and finger print expert Sh. Satdev Aggarwal may create multiplicity of litigation amongst the parties on account of

challenge to the same by either party. Moreover, the question of corroboration and admissibility under law would arise if the same is permitted to rely upon.

12. That petitioner is still ready to get the opinion of the handwriting expert but justice would be served to the petitioner, if the said report is sought from a government recognized laboratory i.e. Forensic Science Laboratory, as is prayed in the application.”

A perusal of the above extracted paras would manifest that the petitioner has already acted upon the order dated 10.10.2022 (Annexure P-7) passed by the Judicial Magistrate, 1st Class, Faridabad by bringing its own handwriting and finger print expert Sh. Satdev Aggarwal before the trial Court, who took the photographs of the cheque in question in the Court itself and the case was adjourned for 06.12.2022 awaiting report of the expert. Thus, once the petitioner has already got his expert, who has taken the photograph of the cheque and the case was adjourned for awaiting report of expert; at this stage, it does not lie in the mouth of the petitioner to contend that the report from handwriting and finger print expert Sh. Satdev Aggarwal may create multiplicity of litigation and justice would be served to the petitioner, if the report is sought from a government recognised laboratory i.e. Forensic Science Laboratory, as was prayed in the application (Annexure P-5) filed by the petitioner.

It is pointed out that in terms of Section 45 of the Indian Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a conclusive evidence. It is well settled that the opinion of the handwriting expert cannot be substitute for the direct evidence and is meant only to assist the Court in arriving at an appropriate conclusion.

In my considered view, while passing the order dated 10.10.2022 (Annexure P-7), Judicial Magistrate, 1st Class, Faridabad has kept in view the correct legal position that when an accused contends that a cheque has been misused, though the presumption under Sections 118A and 139 of the Act can be raised, still an opportunity must be granted to the accused for adducing evidence. In line with the said legal position, Judicial Magistrate, 1st Class, Faridabad, deemed it appropriate to allow the application filed by petitioner for obtaining opinion of the handwriting expert by directing the petitioner-accused to bring his own handwriting expert rather than sending the cheque in question to Forensic Science Laboratory Expert. I do not see any reason for the petitioner's insistence upon getting opinion of Forensic Science Laboratory Expert.

In view of aforementioned facts and circumstances, I do not find any illegality or perversity in the said order dated 10.10.2022 (Annexure P-7) passed by the Judicial Magistrate, 1st Class, Faridabad; accordingly, the same is upheld.

No other point has been argued.

The instant petition is accordingly dismissed.

December 23, 2022
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(HARSH BUNGER)
JUDGE

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