

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

249

CRR-411 of 2023 (O&M)

Date of Decision: 11.12.2023

M/s Gulshan Rai Jain and others

...Petitioners

Versus

Naresh Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Arnav Kumar, Advocate, for the petitioners.

Mr. Bhanu Udai, Advocate for

Mr. Vikas Gulia, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The present revision petition has been preferred against the order dated 11.01.2023 passed by the Court of Judicial Magistrate 1st Class, Sonapat, whereby, the right of the petitioners to examine a expert witness stood closed by Court order.

2. As per the case of the complainant, the petitioners/accused had issued a cheque bearing No. 044517 dated 01.03.2013 for a sum of Rs. 17,70,000/- and another cheque bearing No. 44518 dated 01.04.2013 for a sum of Rs. 15,22,500/- both drawn on HDFC Bank, Anand Vihar Branch, Delhi in favour of respondent/complainant. The said cheques were returned unpaid vide memo dated 30.05.2013. Even after issuance of statutory notice dated 21.06.2013, the petitioners did not make the payment of the amount equal to the amount filled in cheques, consequently, the complaint

was filed against the petitioners. It was also pleaded by the respondent/complainant that the accused had taken a friendly loan of Rs. 30 lacs from the complainant at the rate of 18% per annum and the same was acknowledged vide letter dated 03.09.2012 in the following terms:-

“1.7.That the petitioners herein issued the cheques in question to the respondent herein qua the payment of the abovesaid loan. The petitioners issued the cheques in question vide letter dated 25.02.2013 and also acknowledged the amounts mentioned in the cheques i.e. the total amount which includes principal as well as interest”.

The copy of the letter has been annexed as Annexure P-1 with the present petition.

3. Learned counsel for the petitioners submits that during the course of trial, at the time of recording of the defence, the petitioner No. 2 had specifically denied his signatures on Ex.C5 letter dated 25.02.2013 (Annexure P-1) and stated that his signatures were forged and fabricated. Thereafter, the respondent/complainant examined himself as CW1 and produced Naveen Jain as CW2 and the evidence of the complainant was concluded on 03.08.2022. Thereafter, the statements of petitioners No. 1 and 2 were recorded on 10.08.2022 and 01.09.2022, respectively. On 29.09.2022, the petitioners filed an application under Section 315 Cr.P.C., the list of

witnesses and an application was moved to sent the document Ex.C5 (Annexure P-1) to CFSL for verifying the signatures of petitioner No.2/accused on the same. Vide order dated 14.12.2022, the trial Court allowed the said application and granted only one opportunity to the petitioners to get the document Ex.C-5 (Annexure P-1) examined through a handwriting expert on their own and the application was allowed subject to the costs of Rs. 1,000/-.

4. On the adjourned date 11.01.2023, the counsel for the petitioners/accused appeared before the trial Court and sought one more opportunity to lead the evidence in respect of above order dated 14.12.2022 as after 14.12.2022, the petitioners were unable to engage a handwriting expert, however, the trial Court did not give any further opportunity and closed the defence evidence vide the impugned order dated 11.01.2023. Challenging the said order, the petitioners have filed the present petition before this Court and prayed for one more effective opportunity to get the signatures of petitioner No. 2 on Annexure P-1 compared through a handwriting expert. Learned counsel prays that he may be afforded one effective opportunity to get his signatures compared in the terms of the order dated 14.12.2022 passed by the trial Court.

5. On the other hand, learned counsel for the respondent has vehemently opposed the submissions made by the learned counsel for the petitioners on the ground that the petitioners had admitted their

signatures on the cheques in question and there was no need to examine an expert in the present case.

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

7. From the submissions made by the learned counsel for the parties, it is apparent that vide order dated 14.12.2022, the application for appointment of the Handwriting and Finger Print Expert was partly allowed subject to payment of costs of Rs. 1000/- in DLSA and one opportunity was granted to the petitioners/accused to examine the expert witness. However, till 11.01.2023, the accused failed to get examine the expert witness and his right to examine expert witness was closed by Court order. In fact, there is no illegality in the impugned order passed by the trial Court, yet, in the interest of justice, one more effective opportunity is granted to the petitioners to examine the handwriting expert, in terms of the order dated 14.12.2022 passed by the trial Court subject to payment of Rs. 10,000/- as costs, which shall be paid by the petitioners to the respondents on the next date of hearing before the trial Court. In fact, the comparison by a handwriting expert in the present case is crucial for making a proper decision in the case as it can provide valuable insights into the authenticity of the document and signatures, helping to establish the truth and ensure that the justice prevails. Such witnesses must be permitted to be examined as expert's assessment enhances the credibility of evidence presented in the Court and

supports the fairness of the judicial process. Even otherwise, the case was already listed for defence evidence and in such an eventuality, a free hand must be given to the accused to produce the witnesses of his choice to prove his defence independently before the trial Court.

8. In view of the above discussion, the present petition is allowed. The order dated 14.12.2022 passed by the trial Court is modified to the extent that the petitioners shall be granted one effective opportunity to examine their handwriting finger print expert, subject to payment of costs of Rs. 10,000/- as costs, which shall be deposited by the petitioner before the trial Court on the adjourned date of hearing and which shall be paid to the respondent.

11.12.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No