

CRM-M-10388-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(262)

CRM-M-10388-2020

RESERVED ON 08.08.2023

DATE OF DECISION:- 12.09.2023

RAJESH KUMAR

...PETITIONER

VERSUS

KAILASH CHAND

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. J.P.Sharma, Advocate
for the respondent.

SUVIR SEHGAL, J.

1. Instant revision petition has been filed by the accused-petitioner impugning order dated 27.02.2020, Annexure P-1, passed by learned Judicial Magistrate, Narnaul, whereby application filed by him for examination of a handwriting and fingerprint expert as a witness and for taking the specimen signature of the accused for comparison, has been rejected by the Trial Court.

2. Factual position is not in dispute. A complaint dated 21.01.2013, Annexure P-7, has been instituted by the complainant-

respondent under Section 138 of the Negotiable Instruments Act, 1881 (for brevity “NI Act”) alleging that he is running Munim Milk Diary, Dolhera and after collecting milk from adjacent villages, he used to supply it to the petitioner, who had installed a Chilling Plant. Petitioner was irregular in making payment and issued a cheque of Rs.8 lacs on 10.11.2012 drawn on HDFC Bank, Meham Chowk, Bhiwani for towards payment of the balance amount due. However, on presentation, the cheque was returned with the remark “insufficient funds”. After preliminary evidence, petitioner was summoned and served with a notice of accusation. He pleaded innocence and claimed trial. On conclusion of after charge evidence, statement of the accused was recorded under Section 313 Cr.P.C. on 05.02.2020, Annexure P-5 in which he admitted the signature on the cheque, though he denied any transaction with the respondent and alleged that the respondent had misused the cheque. Petitioner filed an application dated 07.02.2020, Annexure P-4, under Section 315 Cr.P.C., which has been allowed and he was permitted to lead defence evidence. Application dated 20.02.2020, Annexure P-2, filed by him, for examination of a fingerprint and handwriting expert, has been opposed by the respondent by filing a response, Annexure P-3, and after contest, has been rejected by the Trial Court vide order impugned herein.

3. Counsel for the petitioner has urged that petitioner had given a blank signed cheque to the respondent’s son, who was supplying milk, as security, but the cheque has been misused by the respondent. He asserts that the petitioner did not fill the body of the cheque and in order to establish this fact, he wants an expert to examine the cheque and has sought permission for giving his specimen writing for comparison.

Reliance has been placed by him upon the judgment of Supreme Court in *T.Nagappa Versus Y.R.Muralidhar AIR 2008 SC 2010* and judgments of this Court in *Krishna Devi Shukla Versus K. S. Oil Limited 2023 (1) CRI.CC 691; M/s P.L. Forging Private Limited and another Versus M/s Bhushan Power and Steel Limited 2019 (1) NIJ 770; Puneet Kumar Versus Amandeep Singh 2018 (4) Law Herald 3416* and judgment of the Gujarat High Court in *Abdul Rauf Abdul Rashid Shaikh Versus Shaikh Nuruddin Sarafuddin and another 2018 (1) Guj. LH 617* to contend that as burden is on the accused to establish his innocence, a fair opportunity must be granted to him for adducing evidence in rebuttal.

4. Opposing the petition, counsel for the respondent has urged that the signature on the cheque have been admitted by the petitioner, therefore, there is no occasion for summoning an expert for the comparison of the writing on the cheque. He has placed reliance upon the judgment of the Supreme Court in *Oriental Bank of Commerce Versus Prabodh Kumar Tewari 2022 SCC Online 1089*, judgments of this Court in *Gurmeet Singh Versus State of Haryana 2012 (2) RCR (Criminal) 306; Sudhir Kumar Versus Padam Singh 2022 (2) RCR (Criminal) 563* and a Division Bench of the Kerala High Court in *Lillykutty Versus Lawrance 2003 (4) RCR (Criminal) 805*.

5. I have considered the respective submissions of counsel for the parties and perused the paper book.

6. In *Bir Singh Versus Mukesh Kumar (2019) 4 SCC 197*, Supreme Court has held that a meaningful reading of the provisions of the NI Act, including Sections 20, 87 and 139, makes it clear that a person, who signs a cheque and hands 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 has been further held that 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 and if the cheque is otherwise valid, the penal provisions of Section 138 of the NI Act would be attracted. The Court held that the onus is on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. Following this judgment, Supreme Court in ***Oriental Bank of Commerce's*** case (supra) observed as under:-

“18. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.

19. Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability”

7. A Division Bench of Kerala High Court in ***Lillykutty's*** case (supra) has held that there is no alteration under Section 87 of the NI Act,

if the amount, date and name on the cheque is with a different hand than the signatures. There is no rule in the banking business that payee's name as well as the amount should be written by the drawer himself. According to the Division Bench, what is material is the signature of the drawer and not the body of the instrument. Banks normally see whether the instrument is that of the drawer and the cheque has been drawn by the drawer himself.

8. Adverting to the facts of the case in hand, the defence of the accused-petitioner is that he has signed the cheque, though he is disputed the contents of the negotiable instrument. He has admitted his signature in his statement recorded under Section 313 Cr.P.C. In these circumstances, the burden is upon him to show that the cheque was not issued by him for payment of any legally enforceable debt or in discharge of a liability as this is the only defence available to him in the light of the presumption, which has to be drawn against him, under Section 139 of the NI Act.

9. In so far as the judgments relied by counsel for the petitioner are concerned, there is no dispute with the proposition that an accused is entitled to grant of ample opportunity for adducing evidence in rebuttal and that he is entitled to a fair trial. In *T. Nagappa's* case (supra), which has been followed by this High Court in the judgments cited by counsel for the petitioner, Supreme Court permitted the accused to examine a handwriting expert to prove the age of the writings on the cheque as a stand had been taken by the accused that the cheque was signed in the year 1999 and has been filled up in 2004. In *Abdul Rauf Abdul Rashid Shaikh's* case (supra), Gujarat High Court was faced with this situation where an application filed by the accused for examining himself as well

as five defence witnesses was accepted in part and examination of a bank official was disallowed. Allowing the petition, High Court of Gujarat came to the conclusion that the accused should be permitted to lead appropriate evidence for the purpose of rebutting the presumption under Section 139 of the NI Act and the evidence, which she produces, will have to be appreciated by bearing in mind the fact regarding the burden of case. The judgments relied upon by the counsel for the petitioner do not, therefore, advance his case and will not come to his aid.

10. For the aforesaid reasons, this Court is of the view that there is no illegality or perversity in the order passed by the trial Court.

11. Finding no merit in the petition, it is hereby dismissed.

12.09.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No