

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20980-2016 (O&M)
Reserved on : 09.08.2023
Pronounced: 18.08.2023

Anuj Sharma ...Petitioner
Versus
Pardeep Kumar Rana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. M.K. Pundir, Advocate for the petitioner.
Mr. Dinesh Babu Khurana, Advocate for
Mr. Rishi Pal Rana, Advocate for the respondent.

HARNARESH SINGH GILL, J. (ORAL)

Prayer in the petition is for quashing of the order dated 26.05.2016 passed by the learned Judicial Magistrate 1st Class, Yamuna Nagar, vide which the application dated 18.05.2016 (Annexure P-4) under Section 311 Cr.P.C. read with Section 311-A Cr.P.C. for permission to examine a Handwriting Expert for comparison of specimen signatures of the accused with that on the cheque in question, was dismissed.

The petitioner filed a complaint against the respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') before the learned Judicial Magistrate, Ist Class, Yamuna Nagar, Jagadhari. In the said compliant, the respondent was summoned. As per facts on record, the respondents denied his signatures on the cheque in question from the very beginning. Accordingly, in defence evidence, the respondent examined handwriting expert, to compare the signatures on the cheque with the signatures on power of attorney, bail bonds and copy of specimen signatures

produced by ICICI Bank official.

Petitioner moved an application seeking appointment of a handwriting expert for comparing the signatures of the respondent on the cheque with his specimen signatures. The said application, as noticed above, was dismissed by the trial Court vide order dated 26.05.2016 impugned herein.

Learned counsel for the petitioner submits that the respondent was having cordial relations with the petitioner and by taking advantage of the same, he had borrowed a sum of Rs.9,80,000/- from him (petitioner) with an assurance of returning the same within a few days and that in lieu of discharging the legal liabilities, the respondent had issued a cheque bearing No.299132 dated 16.12.2022 for a sum of Rs.9,80,000/- in favour of the petitioner, which was dishonoured on its presentation on account of 'Account Closed'. It is further submitted that the legal notice dated 17.01.2023 served upon the respondent by the petitioner through his counsel was not replied to by the respondent; that the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') against the respondent, wherein the respondent was summoned by the learned Judicial Magistrate 1st Class, Jagadhari, and notice of accusation was given to the respondent-accused and that after completion of prosecution evidence, the respondent-accused denied the signatures on the cheque and filed an application (Annexure P-2) for permission to examine a Handwriting Expert for comparison of the handwriting on the cheque in question with the original record from the Bank, which was allowed. It is yet further submitted that the Handwriting Expert had compared the signatures of the respondent-accused with the signatures on the power of attorney and bail bonds, which were

signed by the accused after receipt of the summons from the Court, instead of taking specimen signatures of the respondent before the Court.

Learned counsel for the respondent submits that while dismissing the application dated 18.05.2016 (Annexure P-4) under Section 311 Cr.P.C. read with Section 311-A Cr.P.C., the trial Court has rightly observed that the respondent has disputed his signatures on the cheque in question from the beginning and that the question that the signatures were taken from the power of attorney and the bail bonds and not obtained in the Court, is a matter of trial. It is further submitted that the case before the learned trial Court is at its fag end; that the case was filed in the year 2016 and the petitioner did not choose to appear before the Court for the last 11 dates and that he only had appeared on the last date, when he was bound down by the Court.

It is further submitted that as the case is at the stage of defence evidence, the petitioner cannot be allowed to fill in the lacunae. In support of his case, he relies upon the judgments of the Coordinate Benches of this Court in Iqbal Singh Vs. State of Punjab, 1999 (4) RCR (Criminal) 625, Jagjit Singh Vs. Satinderjit Singh, 2013(8)RCR (Crl.) 3010 and Bhim Singh Vs. State of Punjab and another, 2015(6) RCR (Criminal) 552.

I have heard the learned counsel for the parties and have also gone through the paper book.

There is no denying the fact that the respondent had disputed his signatures on the cheque from the very beginning. Having been aware of such stand of the respondent, it was incumbent upon the petitioner/complainant to lead his evidence so as to seek examination of a handwriting expert to compare the signatures of the respondent on the cheque with his specimen

signatures, when the petitioner/complainant had led his evidence. Such permission cannot be granted to the petitioner/complainant at the stage of the defence evidence. It is a settled law that if the complainant knowing fully well that the accused has denied his signatures on the cheque, did not choose to examine an expert, he cannot be permitted to examine such expert by way of rebuttal to defence evidence. Such is the view taken by the Coordinate Benches in Iqbal Singh's, Jagjit Singh's and Bhim Singh's cases (supra).

It may also be noticed here that parties to the lis, have the tendency to examine the expert(s) of their choice. It is also settled law that the report of such experts are not binding upon the Courts. While deciding the lis, the Courts are to apply their judicious mind so as to bring the matter to the logical end. Thus, merely because the respondent-accused has got his handwriting expert examined, is no ground to accept the plea of the petitioner/complainant that he should also be granted such opportunity.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

18.08.2023

Mangal Singh

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No