

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13671-2023
Date of decision 21.09.2023

VIJAY TANEJA

... Petitioner(s)

Versus

NARESH GUREJA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kunal Dawar, Advocate
for the petitioner(s).

Mr. Mayank Bajaj, Advocate
for the respondent.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 16.02.2023 (Annexure P-2) passed by the JMIC, Gurugram in Complaint No.3998 of 2017 dated 18.03.2017 under Section 138 of the Negotiable Instruments Act, 1881 titled as Vijay Taneja Vs. Naresh Gureja, whereby an application moved by the petitioner/complainant for sending the cheque in question for examination to the FSL Madhuban for comparison of the signatures of the accused has been dismissed.

2. The brief facts of the case are that the petitioner/complainant filed a Criminal Complaint under Section 138 of the Negotiable Instruments Act, 1881. As per the case of the petitioner, as a discharge of his legally enforceable debt, the respondent/accused had handed over a cheque of his firm M/s V.K. Casting bearing Cheque

No.921238 dated 28.12.2016 drawn on the Indian Overseas Bank, Old Railway Road, Gurugram for Rs.3,00,000/- which upon presentation was dishonoured. Pursuant to the issuance of the statutory notice, a complaint under Section 138 of the Negotiable Instruments Act was filed after which the respondent/accused came to be summoned to face trial under Section 138 of the Negotiable Instruments Act by the JMIC, Gurugram. A copy of the complaint is attached as Annexure P-3 to the petition.

3. Subsequent thereto, an application was moved by the respondent/accused for cross-examination of the complainant under Section 145(2) of the N.I. Act which application was allowed vide order dated 22.02.2018. After the completion of the cross-examination of the complainant on 24.09.2019, an application was moved by the respondent/accused for examining the handwriting and fingerprint expert in defence by stating that since the cheque was returned for the reason 'Payment Stopped' the signatures on the cheque was not compared with the specimen signatures by the bank officials and as such, the examination of the handwriting and fingerprint expert was required for comparison of the signatures of the respondent/accused on the cheques as the same had been misused and forged.

4. An application for examination of the handwriting and fingerprint expert was allowed by the JMIC, vide order dated 11.01.2022. It was observed that the respondent/accused had taken a consistent stand that the cheque did not bear his signatures and therefore, it was expedient if an expert was examined so as to enable the Court to

reach on a conclusion as to the true facts. A copy of the said order dated 11.01.2022 is attached as Annexure P-5 to the petition.

5. The aforementioned order was challenged by the petitioner before this Court vide CRM-M-18313-2022. The said petition was ordered to be dismissed as withdrawn vide order dated 02.05.2022 with the liberty to the petitioner to move an application before the Trial Court seeking an examination of the cheque in question by a Government appointed expert/FSL laboratory.

6. In pursuance to the aforementioned, liberty granted, an application was moved for sending the cheque in question to the FSL to verify the genuineness of the signatures. A copy of the said application is attached as Annexure P-6 to the petition.

A response was filed to the application by the respondent/accused pleading that the said application had been moved just to delay the conclusion of the trial.

7. Based on the respective contentions of both the parties, the impugned order dated 16.02.2023 (Annexure P-2) came to be passed wherein the Court held that there was no necessity to send the cheque in question to the FSL to verify the signatures of the accused on the cheque since from the very inception the accused had taken a defence that the cheque did not bear a signatures and the complainant/petitioner had ample opportunity to examine a handwriting/fingerprint expert on his part to rebut the contentions of the accused but had not done so.

The aforementioned order is under challenge in this petition.

8. The learned counsel for the petitioner contends that it was only when the order dated 11.01.2022 (Annexure P-5) came to be passed whereby the respondent/accused was permitted to examine a private handwriting expert if the cause of action arise in favour of the petitioner. The Trial Court had failed to appreciate the fact that a private handwriting expert would always give a report in favour of the person engaging him for his services. In fact, the Court ought to have referred the cheque in question for examination by the FSL Madhuban for comparison with the admitted signatures of the respondent/accused. In the alternative, the petitioner/complainant could have been granted the liberty to get examine the cheque in question from a Government laboratory as the plea of forgery and fabrication had not been taken in the plea of defence by the respondent/accused. In fact, the report of a Government Scientific Expert or Forensic Science Laboratory would have enabled the Trial Court to render a more effective judgment by providing an unbiased report. Reliance is placed on the judgments in cases of *Gulzar Ali Vs. State of Himachal Pradesh Crl. Appeal No.657 of 1996 Decided on 21.10.1997 (SC)*, *Chamkaur Singh Vs. Mithu Singh 2014(1) RCR (Civil) 303* & *Balwinder Singh Vs. M/s Aggarwal Finance CRM-M-37322-2022 Decided on 28.09.2022 (P&H)*.

9. On the other hand, the learned counsel for the respondent/accused contends that the petitioner/complainant wanted to delay proceedings by moving the instant application. It was the consistent case of the respondent/accused that his signatures had been fabricated and therefore, the petitioner/complainant ought to have

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examined a handwriting expert at the initial stage of the instant proceedings. The application had been moved just to fill up a lacuna in the case of the petitioner/complainant. The respondent/accused had already examined a handwriting expert as DW4 and therefore, the present application was not maintainable.

10. I have heard the learned counsel for the parties.

11. Before proceeding further, it would be apposite to refer to the relevant judgments in regard to the contentions raised held as under:-

Gulzar Ali Vs. State of Himachal Pradesh Crl. Appeal

No.657 of 1996 Decided on 21.10.1997 (SC), held as under:-

“8. If those letters are genuine, no doubt, they would reflect the mind of A1 and A2 towards the deceased. PW-20 (M.L. Sharma) Government Examiner on questioned documents, after comparing the hand-writing in the said letters gave an opinion that both were written by the accused. An attempt was made by the accused, through the evidence of DW1 (N.K. Jain who claimed to be an expert in the science of hand-writing) to show that opinion of the Government Examiner is basically faulty. High Court has observed that "there is a natural tendency on the part of an expert witness to support the view of the person who called him" and preferred the opinion of PW-20-M.L. Sharma. The said observations of the High Court cannot be downstaged, for, many so-called experts have shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them.

9. It must be remembered and expert regarding hand-writing is not the only mode by which genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the hand-writing must be

proved to be that of the person concerned. In order to prove the identity of the hand-writing any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and 47 of the Evidence Act. The former permits expert opinion to be regarded as relevant evidence and the latter permits opinion of any person acquainted with such hand-writing to be regarded as relevant evidence. Those and some other provisions are subsumed under the title "opinion of third persons, when relevant". Opinions of third persons, other than those enumerated in the fasciculus of provisions, would have been irrelevant. Among the permitted opinions those mentioned in Sections 45 and 47 are also included. So it cannot be said that identity of hand-writing of a document can be established only by resorting to one of those two sections. There can be other modes through which identity of the hand-writing can be established. Citing an example, if a letter is seized from the possession of 'A' and the letter contains the name of the sender as well as the name of the sendee and if such sendee happens to be 'A' himself, those circumstances even without resorting to the mode indicated in Sections 45 and 47 of the Evidence Act, would be sufficient to draw an inference that the author or even scribe of that letter is the sender and 'A' is the sendee of it.

(emphasis supplied)

This Court in **Chamkaur Singh Vs. Mithu Singh 2014(1)**

RCR (Civil) 303, held as under:-

“12. In view of Tarak Nath (supra), the Court is not an handwriting expert. The Court does it only through its visual experience. Ordinarily, the Court should not take upon itself the responsibility of comparing signatures when disputed, as in such matters technical expertise is necessary. In view of the above discussion and the fact that

the trial Court has to determine a fact and to give weight and see credibility of experts' opinion, the opinion of third Government expert which may be an independent opinion may help the Court to break the stalemate and mitigate the conflict between the opinions of private experts giving conflicting opinions. Although the opinion of the third expert is not binding upon the Court, yet the trial Court being a Court of fact has to arrive at independent decision and opinions of experts are not binding upon the trial Court as the Court is undoubtedly an expert of experts. The conflicting opinions from equal number of experts between two sides is a common scenario in our legal system. It is true that a party having a weak case concentrates on discrediting the witness by old tricks of "playing the man and not the ball". In the present case, since the parties are not opposed to the appointment of an independent handwriting expert, this Court in the peculiar facts and circumstances of the case deems it fit and appropriate that opinion of an expert of SFSL/Central Forensic Science Laboratory, Chandigarh (in short 'CFSL'), which is a Government agency would be necessary to resolve the conflict.

13. In view of above discussion as well as to do substantial justice and in the interests of justice, the impugned order dated 07.05.2013 is set aside, the instant petition is allowed and application moved by the petitioner-defendant for sending the pronote and receipt in dispute for comparison to the SFSL/CFSL is allowed. The trial Court can summon the SFSL/CFSL expert for comparison of the questioned documents i.e. pronote and receipt with standard writing/signature and to check alteration or addition or may direct the authorities of the Laboratory to inspect the pronote and receipt in Court and submit report. The expenses to be assessed by the trial Court for comparison

of the pronote and receipt in dispute shall be borne by the petitioner-defendant.

14. Before parting with this order, it would be appropriate to mention that often a court is faced with conflicting opinions given by handwriting experts. The spirit of Sections 45 and 47 of the Act is that the expert whose opinion is sought on a questioned document, should indeed be an expert/skilled person in the field concerned. In Indian Courts, the procedure is adversarial as opposed to the inquisitorial. The role of a Judge is to preside over the proceedings and rule on the points of law. The expert's overriding duty is to the Court, not to who call him. The opinion of the expert is very important and the court has to determine the lis keeping in view his opinion. Any lapse or mistake due to lack of skill by the expert can lead to grave and manifest injustice to a party. Keeping this in view, this Court is of the opinion that since the opinions of handwriting and fingerprint expert who examine the questioned documents, thumb impressions, signatures, forged documents etc. is very important and has a direct bearing on the credibility of evidence. The need of hour is to control, regulate, certify, accredit and devise means for registering expert witnesses who appear in Courts. The Departments of Justice and Home Affairs of the respective States of Punjab, Haryana and Union Territory, Chandigarh are directed to delve deep in the field and come out with viable mechanism to facilitate the justice dispensation by remedying the prevalent maladies/handicaps in system and the responsible officer of the Departments of Justice and Home Affairs of the respective States of Punjab, Haryana and Union Territory, Chandigarh should file affidavits of compliance within three months as far as proposed action on their part is concerned and prepare list of fingerprint and handwriting

experts or forensic questioned documents examiners, who are qualified and skilled to practice this profession on full time basis. The State Governments should check their qualifications and credentials and confirm their credibility in this field. A register of such practitioners should be drawn and rules be framed. A Code of ethics and conduct for their working should also be framed. Besides this, regulatory authority comprising of qualified concerned registered professionals and others related to field be also established to deal with the situations where there are conflicting opinions of experts and the consensus opinion of the Board of experts under the supervision of expert regulatory authority should be binding on the contesting parties.

(emphasis supplied)

Balwinder Singh Vs. M/s Aggarwal Finance CRM-M-

37322-2022 Decided on 28.09.2022 (P&H), held as under:-

“7. The defence of the petitioner is that the cheque in question was a security cheque which was misused by the complainant. He thus, wants to submit that the hand writing on the cheque leave was not his and in order to substantiate the said defence the present application has been moved. It has further come on record that earlier the complainant moved an application seeking permission to examine the hand writing expert for comparison of signatures of the accused. In the said application, the accused had taken a positive stand "that the signatures may kindly be ordered to be compared through FSL, Madhuban (government agency) as private expert tend to favour party calling the said expert."

8. It is admitted position that the said application was allowed. The private expert was examined by the complainant though the expert was cross-examined at

length and that too with the aid of hand writing expert by the accused.

9. As per settled law, doors cannot be closed on the face of the accused. He has a right to prove his defence. However, keeping in view the conduct of the accused as noticed hereinabove, in order to balance the equities, the application moved by the petitioner is allowed. The impugned order dated 20.7.2022 (Annexure P-4) is set aside subject to payment of costs of Rs.50,000/- which shall be paid by the accused to the complainant.

(emphasis supplied)

12. A combined reading of the aforementioned judgment would show that one of the methods of proving the signatures of a person is by examining a handwriting expert and to ensure fairness it would always be appropriate to seek an opinion from a Government laboratory since private experts would ordinarily given opinion/report in favour of the party engaging him/calling him as a witness.

13. Coming back to the facts of the instant case, it is apparent that it was vide order dated 11.01.2022 (Annexure P-5) that the Trial Court permitted the accused/respondent to avail the services of a handwriting and fingerprint expert to examine the purported signatures of the accused/respondent on the cheque in question. At that stage itself, the Court should have been vigilant and ought to have sent the signatures for comparison to a Government laboratory. The same not having been done, the order came to be challenged by the petitioner/complainant before this Court wherein vide order dated 16.02.2023 (Annexure P-2), this Court had permitted the

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petitioner/complainant to move an appropriate application before the Trial Court seeking the examination of the cheque in question by a Government appointed handwriting expert/FSL. On an application being moved, the Trial Court has rejected the same stating that there was no necessity of sending the said cheque to the FSL since a cheque had already been examined by a private expert. This in my opinion is an erroneous finding. The object of a Trial is to do justice to all sides and come out with the unvarnished truth. In the instant case, the argument raised by the petitioner that a private expert shall invariably give a report in favour of the person engaging him for his services cannot be negated. In fact, it is with a view to secure the ends of justice, it would be appropriate if the signature on the cheque in question is examined by the experts at FSL Madhuban so that a report in that regard is presented before the Trial Court who shall then proceed to adjudicate upon the matter in accordance with law.

14. In view of the aforementioned discussion, the order dated 16.02.2023 (Annexure P-2) stands quashed and (Annexure P-6) was allowed. Subsequent to the obtaining of the report, the Trial Court is directed to conclude the trial as expeditiously as possible as the complaint pertains to the year 2017.

15. Disposed of in the aforementioned terms.

(JASJIT SINGH BEDI)
JUDGE

21.09.2023
JITESH

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