

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

CRR-544-2021

Date of decision:-28.08.2023

Vivek

...Petitioner

Versus

Krishan Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr. S.C. Nagpal, Advocate and
Mr. S.K. Pandey, Advocate
for the petitioner.

Mr. Jai Vir Yadav, Senior Advocate with
Ms. Parul, Advocate for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. By way of instant revision petition, accused/petitioner has assailed order dated 05.04.2021 whereby application filed by him for leading additional evidence under Section 391 Cr.P.C. has been declined.

2. Brief factual matrix to the filing of the petition is that complainant/respondent advanced a friendly loan of Rs.7 lakhs to the petitioner/accused on 02.08.2016 and in discharge of his liability, accused issued a cheque dated 12.07.2017 drawn on Axis Bank, Rewari, which on presentation has been dishonoured by the bank with the

remarks “Account Closed”. After serving a legal notice, respondent filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short “the NI Act”). After trial, by judgment dated 10.04.2019, Annexure P3, learned Additional Chief Judicial Magistrate came to the conclusion that the complainant has proved the accusation and held the petitioner guilty for the offence. Petitioner was sentenced to undergo rigorous imprisonment for a period of two years and to pay compensation equivalent to the amount of the cheque under Section 357(3) Cr.P.C. Judgment and order of sentence have been challenged by the petitioner by filing an appeal. During its pendency, an application dated 07.11.2019, Annexure P1, has been moved for leading additional evidence by examination of a fingerprint and handwriting expert, which after contest, has been dismissed by the Appellate Court by order impugned here.

3. Counsel for the petitioner has urged that the cheque does not bear the signature of the petitioner. He submits that in his cross-examination, Pardeep Kumar - CW3, representative of the bank had categorically admitted that the signature on the cheque have not been compared. By placing reliance on the judgment of this Court in **Ashoka Leyland Finance Ltd. (now merged in IndusInd Bank Ltd.) Versus Ram Kishan, 2015(3) LAR 177**, it has been contended that as the signature on the cheque have been disputed and the petitioner could not get an expert to examine it, the trial Court had erred in convicting the petitioner, who deserves to be granted an opportunity to lead additional evidence.

4. Opposing the prayer, learned Senior Counsel has placed

reliance upon *Ekta Handloom Versus Shivam Traders 2015 (25) RCR (Criminal) 928; Om Poultries and others Versus Dang Poultries 2021 (3) RCR (Criminal) 432* as well as *S.Minz Versus Madhubala Gupta 2012 (5) RCR (Criminal) 430* to argue that the application deserves to be dismissed as the cheque has not been dishonoured on account of mismatch of signature.

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

6. A Coordinate Bench of this Court in *Om Poultries* case (*supra*) has held as under:

“9. An application for appointment of a handwriting and fingerprint expert had been filed by the petitioner before the trial Court, which application was dismissed on the ground that the cheque in question had not been returned by the bank on account of difference in signatures but on account of insufficient funds as also by relying on the law laid down by the Delhi High Court in *S.Minz’s case(supra)* wherein it has been held that when a cheque is not returned on the ground that signatures are not tallying no purpose would be served in sending the same to an expert for comparison of the signatures thereupon with the admitted signatures of the signatory on the cheque. Such order of the trial Court was passed much before its final decision in the petitioners’ trial but the same was not challenged by the petitioners. Thus, it attained finality inter se parties.”

7. Adverting the facts of the present case, it cannot be disputed that the cheque has been dishonoured by the bank on account

of the fact that the bank account of the drawer had been closed and not on account of the difference in signature of the drawer. The stand of disputed signature being taken by the petitioner is clearly an afterthought. Concededly, petitioner did not respond to the legal notice served upon him. There is nothing on the record to show that in his statement under Section 313 Cr.P.C., he had disputed his signature. After recording his statement under Section 313 Cr.P.C., he availed of as many as 6 opportunities to lead defence evidence but he did not produce any witness. As held by this Court in *Ekta Handloom's* case (supra), additional evidence sought to be lead is not such which has come to the notice of the petitioner at a later stage. Even if, he had deposited the diet money for the production of a Forensic Expert, defence evidence eventually was closed on the statement of the counsel for the petitioner and not by a Court order. In view of these facts and circumstances, the judgment relied upon by the counsel for the petitioner is not applicable to the facts of the present case.

8. Furthermore, Section 391 Cr.P.C. vests a discretion in the Appellate Court to permit additional evidence, if it is necessary, in order to enable it to give a correct finding. The test is that such evidence should be necessary for the just and proper decision of the case. The provision is not intended to remedy the negligence or laches of a party. Where there was ample opportunity for a party to adduce evidence, as is the situation in the case at hand and due to carelessness, callousness or omission, he did not lead evidence before the trial Court, it is not desirable to exercise power under Section 391 Cr.P.C. to enable the petitioner to fill in the lacunae. There is no illegality or impropriety in

the order passed by the Appellate Court.

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

28.08.2023
Brij

(SUVIR SEHGAL)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No