

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

CRR-1108-2023

DECIDED ON: 01.05.2023

RAJ RANI

.....PETITIONER

VERSUS

DESRAJ

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivam Sharma, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The instant revision petition has been moved before this Court assailing the order dated 10.03.2022 passed by Judicial Magistrate 1st Class, Tohana, wherein application of petitioner-complainant under Section 311 Cr.P.C., was dismissed.

Learned counsel for the petitioner asserts that being complainant, he moved an application seeking permission to examine Handwriting and Fingerprint Expert in evidence of complainant alleging that report dated 10.12.2022 of the handwriting expert Dr. Inderjeet Singh is required to be examined to divulge the truth and correct opinion, which is based on scientific theories and will be the clinching issue for just and fair adjudication of the case in itself.

The arguments raised by learned counsel for the petitioner is that the accused examined one witness Dr. Inderjeet, Handwring and Fingerprint Expert, Patiala in his defence and the said Handwriting and Fingerprint Expert

submitted his report before learned trial Court as Ex.D-1 alongwith photographs Ex.D-2 to D-10 alongwith his affidavit exhibited as DW-1/A as examination in chief. Since an adverse report has been given by the aforesaid expert qua the signatures of accused Desraj, an apprehension arose in the mind of the petitioner-complainant that a false report has been prepared regarding comparison of signatures upon the cheque in question probably in connivance with the accused, and therefore, rebuttal of said report is just and necessary inasmuch as the specimen signatures have been compared from power of attorney and from the zimni orders.

Having heard learned counsel for the petitioner and perusing the reply filed to the said application before the trial Court on behalf of defendant raising a defence for dismissal of application under Section 311 of Cr.P.C., wherein it has been averred that signatures on the cheque is not fastening of the accused and complainant, who have got the testimony of the expert at the same time during his evidence, which the complainant has failed to do so and rebuttal of such evidence would only be a new fact or improvisation of the evidence.

Considering the aforesaid submissions and the circumstances involved in the case particularly where the signatures on the cheque have been categorically denied by the accused upon the cheque in question and in the light of the report by Handwriting and Fingerprint Expert, Dr. Inderjeet Singh, wherein the signatures in comparison from the power of attorney and zimni orders of the accused did not match with the signatures on the cheque in question have been reported. A rebuttal to the same is required and in fact no prejudice would be caused to the accused-respondent, if the petitioner is allowed to rebut the said evidence, as is the rationale laid down in ***Bande Siva***

Shankara Srinivasa Prasad vs. Ravi Surya Prakash Babu (died) per L.Rs and others 2016 (2) ALT 248, which reads as under:-

*“It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the dispute handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would be ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in ***Janachaitanya Housing Limited vs. Divya Financiers 2008 (3) ALT 409***, as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue.”*

It is also to be borne in mind by this Court that no time can be fixed for filing application seeking expert opinion and an application can be moved at any stage prior to arguments, if circumstances was deemed subject to the discretion of the Court to deal with the said application. However, while deciding the fate of such application under Section 311 of Cr.P.C., the facts

and circumstances and the nature of dispute as well as any prejudice, if likely to be caused to the accused-respondent, is to be kept in mind and there is no hard and fast formula, which can be applied to allow or to dismiss such application.

In the case in hand, this Court deems it appropriate particularly in the light of the fact that handwriting expert report is confined to the verification and assessing the signatures on the disputed cheque, whether pertains to the accused or not, which is the principle question to be answered in a complaint under Section 138 and 148 of Negotiable Instruments Act.

This Court is of the firm view that at least, one last opportunity be granted to the petitioner-applicant for rebuttal of evidence of Dr. Inderjeet Singh, handwriting and fingerprint expert by leading any evidence through another handwriting expert or any other way whatsoever is deemed appropriate.

Looking at the workload over the trial Court and also the fact that a witness is to be summoned and then report is to be prepared and further examination in chief and cross will take place. The whole process is directed to be completed within the next three dates of proceedings by the trial court.

However, the said direction will be subject to payment of cost of Rs.5,000/-, which shall be deposited on the next date of hearing i.e., 06.05.2023 before the trial Court.

In view of the above, petition is allowed.

(SANDEEP MOUDGIL)
JUDGE

01.05.2023
Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No