

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-27957-2018
Date of decision: 18.01.2023

Ashok Kumar

....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Pawan Attri, Advocate for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

Mr. Virender Soni, Advocate for the respondent No. 2.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of order dated 05.06.2018 passed by the Sessions Judge, Karnal affirming the order passed by learned JMIC, Karnal in complaint No. 2754 of 2016 dated 29.09.2016 under Negotiable Instruments Act vide which application of the petitioner for taking permission to examine finger print and handwriting expert in defence was dismissed.

The brief facts of the case are that the complainant-respondent no.2, who had friendly relations with the petitioner was lured by him in January 2016, for the government job, in lieu of which, he paid Rs.7,50,000/- to the petitioner. To return the said amount the cheques that were issued by the petitioner in favour of respondent No. 2, got dishonoured, and a complaint under Section 138 of the Negotiable Instruments Act was filed.

Learned counsel for the petitioner submits that on false basis, respondent No. 2 filed a complaint against the petitioner, even when the cheques in question were not signed by him. To prove this fact, he wants to examine the hand writing and finger print expert, but the application (Annexure P-2) filed for seeking permission for the same was dismissed, without appreciating the facts in the correct perspective. Even the revision filed by the petitioner was wrongly dismissed by learned Sessions Judge.

On the other hand, learned counsel for respondent No.2 states that the learned Courts below after appreciating the evidence on record have rightly dismissed the application of the petitioner.

Heard.

Before considering the matter, it would be apposite to refer to Section 311 Cr.P.C., which reads thus:-

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

No doubt the power conferred on the court under the above provision is wide and wholesome to summon any person or even recall witnesses for re-examination or further examination, necessary in the interest of justice, if the facts and circumstances call for, so as to arrive at a just decision of the case.

Recourse may be had by the Courts to power under Section 311 CrPC only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision as held by

Hon'ble The Supreme Court of India in **Zahira Habibulla H. Sheikh vs. State of Gujarat**, 2004 (2) RCR (Cri) 836., which in the present case the revisional Court rightly upheld the order of the trial Court declining the prayer, finding it not essential to examine the handwriting expert and observed that, "Although, the application filed by the revisionist-accused is sketchy inasmuch as it does not explain as to whether the revisionist-accused wanted to examine handwriting expert to prove that his signatures were not there on the cheque or whether it was not filled in his hand yet, it could be understood from the case set up by him that he wanted to prove that the cheque was not filled in by him. It seems that learned Lower Court proceeded on the wrong assumption that the revisionist-accused wanted to prove that the cheque was not bearing his signature. On this basis, the Court dismissed the application. To this extent the order under challenge may be wrong, but this was not the only ground on which the plea of revisionist-accused was declined. Learned Lower Court also took into consideration the fact that previously the revisionist-accused had compromised the matter and had also made part payment, therefore, in the absence of any specific reason for which he wanted to examine the expert, there was no need to get the cheque in question examined by the expert. The court does not find fault with this reasoning. Even if the revisionist-accused was to be believed that it was a blank signed cheque which was filled in by the respondent-complainant, the question remains that there is no explanation as to how the respondent-complainant came in possession of the cheque or for what purpose was it handed over by the revisionist-accused to him. In these circumstances, even if the cheque was filled in by the respondent-complainant and not by the revisionist-accused, it makes no difference.

Needless to say that expert opinion is not required to adjudicate the matter. Therefore, no interference in the order is warranted. Revision is accordingly dismissed.”

The Courts below have taken due care by not exercising the power under this section, as no plausible justification or explanation was given by the petitioner to examine the hand writing expert and as held by Hon'ble The Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation**, (2019) 14 SCC 328, the power under Section 311 CrPC should be exercised only for strong and valid reasons and with great caution and circumspection.

Considering the facts and circumstances of the case in light of the aforesaid principles, this Court finds no illegality or perversity in the impugned orders passed by the Courts below and do not call for any interference by invoking the jurisdiction under Section 482 Cr.P.C. Accordingly, the present petition being bereft of merits is dismissed.

(AMAN CHAUDHARY)
JUDGE

January 18, 2023

Mehak

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No