

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

CRM-M No.3179 of 2017 (O&M)

Date of decision: 16th January, 2023

Lalit Kishore Sharma

... Petitioner

Versus

Om Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rakesh Dhiman, Advocate for the petitioner.

Ms. Sukriti Gupta and Mr. Sandeep Vermani,
Advocates for the respondent.

MANJARI NEHRU KAUL, J.

Instant petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 16.01.2017 (Annexure P-10) passed by the learned Judicial Magistrate 1st Class, Gurgaon in case No.1679 dated 11.08.2015 titled as 'Om Singh vs. Lalit Kishore Sharma' filed under the provisions of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act'), vide which petitioner's application for examining the Handwriting and Fingerprint Expert has been dismissed by the trial Court.

Learned counsel appearing for the petitioner has submitted that the impugned order vide which the application of the petitioner for examining the Handwriting and Fingerprint Expert was dismissed, while the evidence of the petitioner was still underway, is patently

illegal and unsustainable in the eyes of law being violative of the petitioner's right to defend himself under Article 21 of the Constitution of India. Learned counsel, while drawing the attention of this Court to the statement of the petitioner recorded under Section 313 Cr.P.C., has vehemently argued that therein also he had taken a specific and categorical stand that neither was the cheque in dispute issued by him nor did it bear his signatures.

Learned counsel argued that the Court below failed to appreciate that a specific suggestion was even put to the respondent qua the petitioner not having signed the cheques in question. Therefore, the only way for the petitioner to lead effective defence was to examine the Handwriting and Fingerprint Expert to give his report qua the signatures on the cheques in dispute.

Per contra, learned counsel for the respondent while opposing the submissions made by the learned counsel for the petitioner, submitted that the trial under Section 138 of the Negotiable Instruments Act, 1881 was a summary trial and governed by the provisions of Section 262 to Section 265 of Cr.P.C. and the rights of the accused under these provisions were severely limited. Hence, an accused person could not demand the examination of Handwriting and Fingerprint Expert as a matter of right. Learned counsel further argued that the trial Court had rejected the application of the petitioner by

rightly exercising its discretionary power through a well reasoned order and therefore, it did not warrant any interference.

I have heard learned counsel for the parties and perused the relevant material on record.

A perusal of the record shows that in the statement made under Section 313 Cr.P.C. (Annexure P-5) as well as suggestions put by the petitioner to the respondent during cross-examination, it was his categorical stand that the cheque in question did not bear his signatures. Therefore, to secure the ends of justice and to ensure a fair trial, the petitioner must be given due opportunity to lead evidence in support of the defence set out by him. If the petitioner is denied an opportunity of examining the Handwriting and Fingerprint Expert in support of his case, the defence of the petitioner could be prejudiced.

In the circumstances, the instant petition is allowed and the impugned order (Annexure P-10), vide which the application moved by the petitioner seeking to examine the Handwriting and Fingerprint Expert was declined, is hereby set aside.

(MANJARI NEHRU KAUL)
JUDGE

January 16, 2023
rps

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