

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

205

CRM-M-19713-2022
Date of decision: 12.07.2023

M/s Jai Hind Poultry Farm and others

.....Petitioners

Versus

M/s Raghu Trader

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Prateek Sodhi, Advocate
for the petitioners.

Mr. Akshay Jindal, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioners are seeking quashing of order dated 05.04.2022 (Annexure P-5) passed by learned JMIC, Panchkula in case CIS No.NACT-492-2016 whereby their application for examination of a hand writing expert was declined.

2. Learned counsel for the petitioners *inter alia* contends that it was their specific and consistent stand that the respondent-complainant had falsely implicated them in the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') by misusing the cheques which had been handed over to him by way of security. It has been submitted that the respondent complainant with an oblique motive had clandestinely filled up the body of the cheques including the amount in question. Learned counsel has thus vehemently urged that it would be crucial to examine a hand writing expert in their

defence particularly when the complainant had stated during his cross-examination that the cheques in question had been given by the petitioners by filling the cheques and the amount after duly signing it. In support, learned counsel has drawn the attention of this Court to the cross-examination of the respondent-complainant annexed as Annexure P-3.

3. Learned counsel has submitted that the Trial Court had erroneously dismissed their application under Section 311 of the Cr.P.C. by observing that the examination of the hand writing expert would be of no consequence and would be immaterial for ascertaining whether the body of the cheques had been filled up by the petitioners or not, so long as is the signatures on the cheques were not disputed. Learned counsel has urged that every accused has a right to establish his defence and the burden to rebut the case of the complainant on the touchstone of preponderance of probabilities would be on the petitioners. He has argued that since in the instant case it had all along been the specific stand of the petitioners that the cheques had been misused by the respondent-complainant, the categorical statement of the respondent-complainant during his cross-examination (Annexure P-3) should not have been ignored by the Trial Court. Learned counsel has thus urged that the examination of a hand writing expert would go to the root of the matter and would not in any manner cause any prejudice to the respondent-complainant, rather it would help in facilitating the Court in the adjudication of the case. Learned counsel has prayed for just one effective opportunity to get a hand writing expert examined before the Trial Court. In support, learned counsel has placed reliance

upon *T. Nagappa Vs. Y.R. Muralidhar : 2008(3) RCR (Criminal) 926; M/s P.L. Forging Pvt. Ltd. and another Vs. M/s Bhushan Power & Steel Ltd. : 2019(1) NIJ770; Puneet Kumar Vs. Amandeep Singh : 2018(4) Law Herald 3416; Bir Singh Vs. Mukesh Kumar : 2019(2) RCR (Criminal) 1* and *Rajesh Rana Vs. Parmod Kumar : 2022(4) RCR (Criminal) 381* wherein it has been held that opportunity of rebuttal must be granted to accused for adducing evidence.

4. Per contra, learned counsel for the respondent while opposing the prayer has submitted that the application filed by the petitioners under Section 311 of the Cr.P.C. was nothing but a mere dilatory tactic. He has submitted that even if for the sake of arguments, the contentions of the petitioners were accepted, the best case scenario that in favour of the petitioners would be that body of the cheques in question had not been filled by the petitioners, but by the respondent-complainant. However, even in that eventuality, it would not benefit the petitioners in the light of the ratio of law laid down by the Hon'ble Supreme Court in *Bir Singh's case (supra); M/s Kalamani Tex & another Vs. P. Balasubramanian : 2021(2) RCR (Criminal) 160; Rajni Dhingra Vs. Sanjeev Chugh : 2022(4) RCR (Criminal) 893* and *M/s Sebro Machine Tools Pvt. Ltd. and others Vs. M/s Jyoti Industrial Corporation : 2022(2) RCR (Criminal) 659*, wherein it had been held that even a blank cheque leaf voluntarily signed and handed over by the accused towards some payment would attract the presumption under Section 139 of the NI Act. He has, thus, submitted that in case the prayer of the petitioners is accepted it would be an exercise in futility and would also lead to wastage of precious time of

the Trial Court.

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

6. The petitioners have taken a specific stand before the Trial Court that blank cheques issued to the complainant as security had been misused by him as the body of the cheques including the amount in question had not been filled up by the petitioners. Learned counsel for the petitioners has drawn the attention of this Court to cross-examination of the complainant (Annexure P-3) wherein the latter while deposing as CW1 has himself stated to the contrary that the amount on the cheques in question had been filled up by the petitioners. When two contrary versions have been brought forth by the parties, the right of the accused to establish his defence of leading evidence to prove his version should not be taken away. The prayer for examination of a hand writing expert cannot in the facts and circumstances of the instant case, be termed as a ploy on the part of the petitioners to change the complexion of the case against him. Rather, it could facilitate the Court and be “essential to the just decision of the case” as it appears in Section 311 of the Cr.P.C.

7. The case laws relied upon by the learned counsel for the respondent would not further his cause at this stage, as the trial is still underway. The accused has a right to raise a probable defence and the said defence would be appreciated by the Trial Court at the time of final adjudication. Thus, it would not be fair to prejudge the defence of the petitioners.

8. Hon'ble Supreme Court in T. Nagappa's case (supra) has

held as under:-

“8. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant.

9. The learned Trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of Section 20 of the Negotiable Instruments Act. The very fact that by reason thereof, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bonafide.”

9. No prejudice would be caused to the complainant, if relief prayed for is granted, not because it would be impossible for the Trial Court to pronounce judgment but because there could be failure without it. As a sequel to the above discussion and in the interest of justice, the petition is allowed and order dated 05.04.2022 is set aside. As undertaken by the learned counsel for the petitioners only one effective opportunity to examine the hand writing expert is granted.

10. Since the present case pertains to the year 2016 and pronouncement of judgment had been stayed by this Court vide order dated 09.05.2022, it is clarified that no unnecessary adjournments shall be sought for by the petitioners nor will any further opportunity be granted to the petitioners to examine the hand writing expert. The Trial

Court is directed to conclude the trial expeditiously preferably within a period of 04 months from today.

12.07.2023
Vinay

(MANJARI NEHRU KAUL)
JUDGE

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