

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27436-2023 (O&M)

Date of Decision: 13.07.2023

Jaswinder Singh

. . . . Petitioner

Vs.

Rakesh Kumar Jain

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ramesh Chander Sharma, Advocate, for the petitioner.

DEEPAK GUPTA, J.

CRM-27705-2023

This application is filed for placing on record document Ex.D7
sought to be proved by handwriting expert/FSL as Annexure P-5.

Application is allowed as prayed for.

Document Annexure P-5 is taken on record.

CRM-M-27436-2023

This petition under Section 482 Cr.P.C. has been filed for
setting aside the order dated 23.01.2023 (Annexure P3) passed by learned
JMJC, Panchkula, whereby application dated 13.09.2022 (Annexure P1)
moved by the petitioner/accused in a criminal complaint number
NACT/468/2018 titled as '*Rakesh Kumar Jain Vs. Jaswinder Singh*' under
Section 138 of the Negotiable Instruments Act, 1881 [for short 'the Act']
was dismissed. Under challenge is also the order dated 24.03.2023
(Annexure P4) passed by the learned Additional Sessions Judge, Panchkula,
whereby revision against the order dated 23.01.2023 (Annexure P3) was
dismissed.

2. Complaint No.NACT/468/2018 titled as *Rakesh Jain Vs. Jaswinder Singh* was pending before the learned JMIC, Panchkula seeking prosecution of the accused/petitioner under Section 138 of the Act regarding dishonor of two cheques for total amount of ₹5 lakh. During proceedings, application (Annexure P1) was moved by the petitioner to issue direction to the complainant (respondent herein) to give his sample handwriting for comparison of the same with handwriting in Ex.D7. It was contended that Ex.D7 pertains to calculation of the amount regarding interest on loan given to the petitioner and that said writing had been proved during cross-examination of CW2 Mohd. Ayub Qureshi, though denied by the complainant and therefore, comparison of the handwriting on Ex.D7 was necessary through handwriting expert.

3. The complainant/respondent filed reply Annexure P2 raising objection that application was not maintainable in view of the language of Section 311 Cr.P.C. It was further contended that Ex.D7 had been earlier used by the petitioner in a Civil Suit No.132 of 2019 against the husband of the complainant, wherein statement on oath was made to establish that petitioner had paid the amount in that case pertaining to another property of the accused situated in Village Sanolian, Tehsil Rajpura, District Patiala, Punjab, which case was for foreclosure of the loan of ₹26,50,000/-. On the other hand, the present case regarding dishonor of the cheque was qua the financial liability emerging out of agreement to sell dated 28.06.2016 qua the property of the accused situated in Village Barwala (Haryana).

4. After hearing both the sides, learned JMIC, Panchkula by way of a speaking order dated 23.01.2023 (Annexure P3) dismissed the application. Revision against the said order has been dismissed by the

learned Additional Sessions Judge, Panchkula vide Annexure P4 as noted earlier.

5. It is contended by learned counsel for the petitioner that impugned orders have been passed by the Courts below on account of the wrong averments that petitioner had been declared proclaimed offender in more than 10 cases. It is submitted that Ex.D7 is necessary to be proved in order to establish the defence of the petitioner and that relevant provisions of law have been ignored by the Courts below.

6. After hearing learned counsel for the petitioner, I find no merit in the present petition.

7. Section 311A Cr.P.C. empowers a Magistrate to order a person to give specimen signatures or handwriting. However, the main provision of Section 311A of the Cr.P.C. is controlled by its proviso. Complete provision reads as under: -

“311A. Power of Magistrate to order person to give specimen signatures or handwriting - If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”

8. A bare perusal of proviso to Section 311A Cr.P.C. would reveal that the order to give specimen signature or handwriting cannot be

made unless the concerned person has at some time been arrested in connection with investigation or proceeding of the case. The said provision was considered by this Court in **CRM-M-10369-2022** titled as **Sandeep Kumar and others Vs. UT Chandigarh** decided on 10.03.2022, wherein it was held as under: -

“A reading of the above extracted mandate, carried in Section 311 Cr.P.C., empowers the Judicial Magistrate concerned, to make the afore order, not only qua the accused but also with respect to any person, inasmuch as any person other than the accused, or at first glance even qua the victim-complainant. Though, the accused in compliance with the apposite order, did purvey, his specimen, and, admitted handwritings, before the Judicial Magistrate concerned. However, the direction, as, made upon the complainant(s)-victim(s) has remained un-complied with by the latter. The direction, as made upon the victims-complainants though at first glance falls within the ambit of the statutory phrase “any person”, hence existing in the substantive portion of the herein above extracted provision. However, on a deepest reading of the mandate, carried therein, especially of the coinage “any person other than the accused person”, it may not include the victim or the complainant, as the proviso occurring underneath, the substantive provisions as, carried in Section 311 Cr.P.C. rather regulates, and, governs the prior thereto substantive provision existing in Section (supra). Since the order within the ambit of the substantive provisions, cannot be made unless within the proviso the accused or the person concerned, has been arrested, in connection with such investigation or proceeding. Therefore, the apposite proviso, completely barred the learned Judicial Magistrate concerned, to make an order upon the complainants victims, and, even upon the accused, as the accused, as unfolded by an order, as, made by this Court, on 19.12.2019 in CRM-M-54760-2019, became admitted to anticipatory bail. The consequence thereof is that, since within the ambit of the proviso, he did not come to be arrested, whereas, his becoming arrested in relation to the offence carried in the afore

FIR (supra), which otherwise was non-bailable, and, also cognizable offence, rather was a statutory necessity. Therefore, the afore affirmative order, as, made upon the application, moved by the investigating officer concerned, within the ambit of Section 311-A Cr.P.C., was not hence legally amenable to be pronounced by the learned Judicial Magistrate concerned. Contrarily, upon, breach of the bail conditions appertaining to the bail petitioner rather not rendering his cooperation, for the afore purpose, to the investigating officer, did empower the investigating officer concerned, to move an application for cancellation of bail, before the Court concerned, and, upon his arrest the application under Section 311-A Cr.P.C., became maintainable, as the accused had become an arrested person.”

9. In view of the above said enunciation of the legal position, it is clear that in the present case, application of the petitioner seeking direction to the respondent/complainant to give his specimen handwriting / signature was not at all maintainable.
10. As such, finding no merit in this petition, the same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

13.07.2023

Vivek

1. Whether speaking/reasoned?

Yes/No
2. Whether reportable?

Yes/No