

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

CRM-M-7564 of 2018

Date of Decision:02.08.2023

Twinkle

....Petitioner

Versus

Anil Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.S. Majithia, Advocate,
for the petitioner.

Mr. Akhil Kashyap, Advocate, for
Mr. P.K. Kataria, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the order dated 19.01.2018 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Amritsar whereby the application of the petitioner moved under Section 311 of the Code of Criminal Procedure has been declined primarily on the ground that it would occur delay in the trial.

2. It is submitted by learned counsel for the petitioner that it is a case where the petitioner is an accused in a complaint under Section 138 of the Negotiable Instruments Act, 1881. The trial was although complete and the matter was fixed for recording the statement under Section 313 of the Code of Criminal Procedure and the petitioner had moved an application under Section 311 of the

Code of Criminal Procedure for examination of handwriting expert on the ground that on the cheques which were the subject matter of the dispute there were overwriting which can be seen with naked eye and the photocopies of the cheques have been attached with the present petition as Annexures P-2 and P3 which on the face of it shows that overwriting has been done. He submitted that the application has been filed only for the limited purpose for getting the cheques examined from a handwriting expert and since the aforesaid examination is based upon the visible and clear overwriting goes to the root of the matter and therefore the examination of a handwriting expert for the purpose of the ascertaining the genuineness of the cheques is required for just adjudication of the entire case. He submitted that only one opportunity was required which has been erroneously declined by the learned Magistrate.

3. Learned counsel for the petitioner has also brought to the notice of this Court that in the present case notice of motion was issued on 21.02.2018 wherein an interim order was passed that passing of final judgment shall remain stayed and now it is almost five years that the case is pending before this Court and it also caused the delay and therefore mere one opportunity as required by the petitioner to examine the handwriting expert would not be prejudiced the interest of any of the parties.

4. On the other hand, Mr. Akhil Kashyap, Advocate, for Mr. P.K. Kataria, Advocate appearing on behalf of the respondent submitted that although the respondent has not filed reply in the present case but he has submitted that the only reason for filing of the application under Section 311 of the Code of Criminal Procedure by the petitioner was to cause delay in the trial.

5. I have heard the learned counsel for the parties.
6. In the present case, although the case under Section 138 of the NI Act was at the fag end but the fact remains that the passing of the final judgment was stayed by this Court way back in the year 2018 and the prayer of the petitioner is only for grant of one opportunity for examining of a handwriting expert while making a submission that from a naked eye it can be seen that there are overwriting on the cheques Annexures P-2 and P-3 and which goes to the root of the controversy in the present case. The scope of Section 311 of the Code of Criminal Procedure is very vast and the Court which has the powers under Section 311 of the Code of Criminal Procedure has to see as to whether the reasons mentioned in the application for recalling or summoning of a witness affects the merits of the case or goes to the root of the controversy or not. In the facts and circumstances of the present case, learned Magistrate ought to have allowed the application considering the aforesaid facts and circumstances of the present case.
7. In view of the aforesaid facts and circumstances, the present application is allowed and the impugned order dated 19.01.2018 is hereby quashed. The petitioner shall be granted one effective opportunity to examine a handwriting expert subject to payment of costs of Rs.10,000/- to the respondent.

(JASGURPREET SINGH PURI)
JUDGE

August 02, 2023
dinesh

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