

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

CRM-M-8874-2018

Reserved on : 21.07.2023

Pronounced On : 25.07.2023

Dinesh Kumar

....Petitioner

Versus

Nitin Garg

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Gulshan Nandwani, Advocate, for the petitioner.

Mr. Ram Darshan Yadav, Advocate, for the respondent.

HARNARESH SINGH GILL, J.

Challenge is to the orders dated 16.02.2018 passed by the learned Additional Sessions Judge, Rewari and the order dated 20.01.2018, passed by the learned Additonal Chief Judicial Magistrate, Rewari, whereby an application under Section 311 Cr.P.C. filed by the respondent-complainant, was allowed and the respondent-complainant was allowed to summon and examine one Jaibir Yadav, a handwriting expert.

Learned counsel for the petitioner would vehemently argue that once the evidence of the complainant was closed, he could not have been allowed to examine the handwriting expert in rebuttal. It is further submitted that the complainant cannot be allowed to fill the lacuna at the rebuttal stage and, thus, both the Courts have erred in law, while allowing the application

under Section 311 Cr.P.C. moved by the complainant-respondent.

In support of his arguments, learned counsel for the petitioner heavily relies upon the judgments of the Coordinate Benches of this Court in Iqbal Singh Vs. State of Punjab, 1999(4) RCR (Criminal) 625 and Bhim Singh Vs. State of Punjab and another, 2015 (6) RCR (Criminal) 552.

On the other hand, learned counsel appearing for the respondent-complainant submits that as a matter of fact, after the evidence of the complainant was closed, the statement of the accused was recorded under Section 313 Cr.P.C. and the case was fixed for his defence; that thereafter, the petitioner had furnished the list of witnesses and in that list one of the witnesses was Jaibir Singh, handwriting expert, but the petitioner-accused had given up the said witness, which led to the moving of the application under Section 311 Cr.P.C., by the respondent-complainant. It is further submitted that respondent-complainant had no opportunity at any point of time, to either examine or cross-examine the said witness.

I have heard the learned counsel for the parties and have also gone through the impugned orders.

A perusal of the impugned order dated 20.01.2018 passed by the trial Court would show that upon an application filed under Section 145(2) Cr.P.C. by the petitioner, the complainant was cross-examined and on the same date, his evidence was closed and statement of accused-petitioner under Section 313 Cr.P.C. was recorded and the case was adjourned

for defence evidence. Further perusal of the said order reveals that when the case was fixed for defence evidence on 04.12.2017, the petitioner had filed a list of witnesses and one Jaibir Yadav, a handwriting expert had been cited as a witness, but thereafter on 31.08.2017, the said witnesses was given up by the petitioner himself.

The said fact shows that the petitioner himself wanted to examine the handwriting expert and when he gave up that witness, the complainant-respondent moved the application for summoning and examining the said witness.

A careful perusal of the above said facts would leave no manner of doubt that it was the accused-petitioner himself, who wanted to examine the handwriting expert presumably for the reason to establish before the Court that the cheque in question did not bear his signatures. It is not a case, where the complainant wanted to lead evidence in rebuttal to fill in the lacunae. Rather, it is case, wherein the very conduct of the accused-petitioner in giving up the handwriting expert, that had led the needle of suspicion towards the accused-petitioner and provided an opportunity to the complainant to examine the said witness.

Hence, the law laid down by the Coordinate Benches of this Court in the aforesaid two judgments, would not be applicable to the peculiar facts of the present case. In the said judgments, it has been held that the complainant cannot be allowed to fill in the lacunae in rebuttal.

It could not be shown by the learned counsel for the petitioner that the respondent-complainant had an opportunity to summon and cross-examine the said witness. It is also not a case, where the said witness appeared before the Court and the complainant did not examine him. Rather, instant is a case, where the petitioner-accused himself tendered the list of witnesses, including the witness now summoned, and subsequently gave up the said witness. This conduct of proceedings on the part of the petitioner, thus, denied the opportunity to the respondent-complainant to cross-examine the said witness.

Moreover, it was pleaded by the respondent-complainant in his application under Section 311 Cr.P.C., that the handwriting expert was given up by the petitioner-accused as he had given a report against the petitioner. As would appear from the impugned order, the respondent-complainant had also enclosed the said report with the application.

There is no counter to the said factual position on behalf of the learned counsel for the petitioner. The sole reliance is upon the judgments of the Coordinate Benches of this Court that the complainant cannot be allowed to lead evidence in rebuttal. The said argument, as noticed above, has been negated by this Court.

The establishment of the factum of the signatures of the petitioner on the cheque and the disputed writing Exhibit C.1 would be just and relevant for the proper determination and adjudication of the issue at hand.

In view of the above, I do not find any illegality or perversity in the impugned orders passed by the Courts below so as to warrant any interference by this Court.

Dismissed.

25.07.2023
ds

(HARNARESH SINGH GILL)
JUDGE

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