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

CRM-M-38066-2022 (O&M)

Date of decision : 31.07.2023

Anjana Kumari

..... Petitioner

versus

Deepak Bansal

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Abhinav Narang, Advocate
for the petitioner.

Mr. Satyaveer Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

By way of present petition, the petitioner has impugned order dated 22.10.2021 (P-8) and that order dated 06.08.2022 (P-9) passed by revisional Court affirming the same, whereby application filed by the petitioner under Section 311 Cr.P.C. seeking permission to examine hand writing expert stands declined.

2. Petitioner has been summoned to face trial for offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'N.I.' Act) after cheque bearing No. 045483 dated 18.10.2017 purportedly issued by the petitioner was dishonoured for 'insufficient funds' vide memo dated 20.10.2017. Complainant appeared as CW-1 and was cross examined by the defence. The complainant is explicit in his cross-examination to state as under:-

“xx xx xx

The accused herself had filled the contents of the cheque i.e. name, amount in words as well as in

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figures and also the date on the said cheque in my presence as well as in the presence of my mother.

xx xx xx

It is wrong to suggest that I have got filled the contents of the cheque at my own wishes and presented the same to my banker in order to stake the false claim against the accused.”

3. While leading defence evidence, an application was moved by the accused seeking permission to examine handwriting expert with the following averments:-

“1. That in the above noted case, the complainant/accused has stated in his cross examination that the accused herself has filled the contents of cheque in her own handwriting whereas the accused never filled the body of cheque except putting her signature.

2. That in these circumstances the accused wants to get the writing of cheque examined from some handwriting expert. The accused is ready to give her specimen handwriting as and when asked.

Kindly permit the handwriting expert to take the photograph of disputed cheque for the purpose of comparison of same from specimen handwriting of accused to be taken in court, in the Interest of justice.

Dated: 16.12.2019”

4. The same was resisted by the complainant claiming that the application was not maintainable at the time of final arguments and further that filling of a body of cheque being inconsequential, the evidence sought to be brought on record is irrelevant. Trial Court dismissed the application relying upon Sections 20 and Section 49 of

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by resorting to Section 319 Cr.P.C. was irrelevant. The matter was taken by the accused before revisional Court. The revisional Court upheld the order passed by the trial Court affirming the order.

5. Counsel for the petitioner submits that both the Courts i.e. trial Court as well as revisional Court have misdirected themselves by relying upon Sections 20 and 49 of the N.I. Act to hold that the evidence is irrelevant.

6. It has been contended that the relevance of the evidence has to be seen in the light of facts on record and in view of a categorical stand taken by the complainant that the cheque was filled by the accused herself and accused denying the same, opportunity to lead evidence in support of her defence cannot be denied to the accused.

7. Per contra, counsel for the complainant has reiterated submissions based upon Sections 20 and 49 of the N.I. Act to contend that the issue w.r.t. filling of the cheque is inconsequential and thus evidence qua that would be irrelevant.

8. I have heard counsel for the parties and have gone through the records of the case.

9. In the considered opinion of this Court, once accused has taken a particular defence w.r.t. non-filling of the cheque and the complainant being certain to the contrary, definitely the accused has a right to lead evidence in support of her defence. There cannot be any dispute w.r.t. legal proposition that the cheque even though not filled by the drawer would still be valid negotiable instrument. However, the doors cannot be closed for leading evidence on the accused w.r.t. factual assertions and to prove that the complainant was not truthful to

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that incident.

10. In view thereof, the present petition is allowed. Impugned orders 22.10.2021 (P-8) and 06.08.2022 (P-9) passed by the Courts below are hereby quashed. It is, however, made clear that only one opportunity may be granted to the accused to lead her evidence and thereafter the trial Court would not take more than 02 months to decide the complaint finally. Further, keeping in view the fact that the present application has been moved at a highly belated stage, the complainant is further saddled with a cost of Rs.5,000/- which shall be a condition precedent to be deposited with Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund.

11. Ordered accordingly.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

31.07.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No