

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

**Date of Decision: February 15, 2023**

**1. CRM-M-44672 of 2021**

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|-----------------------------------|---------------|----------------------|
| <b>Gurwinder Singh</b>            | <b>Versus</b> | <b>...Petitioner</b> |
| <b>Kuldip Singh @ K.S. Babbar</b> |               | <b>...Respondent</b> |

**2. CRM-M-4661 of 2022**

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| <b>Gurwinder Singh</b>            | <b>Versus</b> | <b>...Petitioner</b> |
| <b>Kuldip Singh @ K.S. Babbar</b> |               | <b>...Respondent</b> |

**3. CRM-M-13590 of 2022**

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| <b>Gurwinder Singh</b>            | <b>Versus</b> | <b>...Petitioner</b> |
| <b>Kuldip Singh @ K.S. Babbar</b> |               | <b>...Respondent</b> |

**4. CRM-M-13889 of 2022**

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| <b>Gurwinder Singh</b>            | <b>Versus</b> | <b>...Petitioner</b> |
| <b>Kuldip Singh @ K.S. Babbar</b> |               | <b>...Respondent</b> |

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. S.D. Bansal, Advocate with Mr. Jeevan Gautam,  
Advocate for the complainant.

**DEEPAK GUPTA, J.(Oral)**

This order shall dispose of four petitions titled above. These are between the same parties and arise from the similar facts. Facts are being taken from CRM-M-44672 of 2021. Prayer has made in all the four cases to set aside the impugned order dated 20.08.2021 passed by learned trial Court in four similar complaints filed under Section 138 of the Negotiable Instruments Act titled “*Kuldip Singh Vs. Gurwinder Singh and others*”, whereby an application filed by the petitioner- accused for examining the

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handwriting expert has been dismissed.

2. Complaint (Annexure P.1) was filed by the respondent- Kuldip Singh to prosecute accused Gurwinder Singh (present petitioner) and two others alleging that vide an agreement dated 06.02.2016, accused had agreed to sell 25% share in a house situated in Sector 21-C, Chandigarh for consideration of ₹70 lacs, out of which ₹63 lacs was paid vide a receipt. Sale deed was to be executed up to 15.03.2016. On the target date, i.e. 15.03.2016, sale deed was not executed but the accused executed another agreement but this time showing sale of 12.50% share only for ₹70 lacs. Receipt of entire amount of ₹70 lacs was shown. On visiting the house in question, complainant came to know about the pending litigation. He also noticed that share of the sold house had been reduced by the accused in the new agreement from 25% to 12.5% and, thus, he had been cheated. Complainant approached the accused either for return of the money or that he shall lodge police complaint, at which four cheques bearing No.031169 (for ₹20 lacs), 031170 (for ₹9 lacs), 031171 (for ₹19 lacs) and 031187 (for ₹22 lacs) were issued with a request to present the same after 15 days. However, on presentation, all the cheques were dishonored. After sending legal notice, four different complaints were filed, in which accused No.1 Gurwinder i.e. petitioner only was summoned to face prosecution under Section 138 of the Negotiable Instruments Act. Complainant- Kuldip appeared as CW1 in support of his case and was duly cross-examined. Statement of the accused- petitioner was recorded under Section 313

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Cr.P.C and then petitioner- accused moved an application for examining of the handwriting expert with a further direction to the complainant to produce the agreements to sell Ex.C1 and Ex.C2 but that application has been declined by learned trial Court by way of the impugned order dated 20.08.2021.

3. It is contended by learned counsel for the petitioner that it is the consistent defence of the petitioner that two agreements to sell in question as relied by the complainant are forged documents; that during his statement, though complainant produced original agreement Ex.C2 but did not produce original of Ex.C1 despite deferring his statement and so the objection regarding exhibition of Ex.C1 was kept open by the Court. Specific suggestions were given to CW1- complainant that two agreements in question were forged. Said stand was also taken by the accused- petitioner in his statement under Section 313 Cr.P.C. Learned counsel has also drawn attention towards the rear of the agreement to contend that payment of ₹36 lacs had been received by the accused in December, 2014, though the agreement to sell is stated to have executed on 06.02.2016, which supports the defence of the accused to the effect that cheques in question were not issued for the purpose as projected by the complainant and that agreements in question have been forged. It is further urged by learned counsel that though presumption under Section 139 of the Negotiable Instruments Act is available to the complainant but accused has a right to rebut the said presumption either by soliciting the questions favourable to him in the cross-examination of the complainant

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or by producing his defence evidence. It is argued that examination of handwriting expert so as to prove the agreements in question to be forged documents was necessary to prove the defence of the accused and, therefore, the impugned order is liable to be set aside.

4. Refuting the aforesaid contention, it is argued by learned counsel for the respondent that once the signature on the cheques in question are admitted by the accused- petitioner, he did not have the right to examine the handwriting expert and so, the trial Court has rightly dismissed the application, which was moved only with a motive to delay the proceedings. Reliance has been placed on ***Sudhir Kumar Vs. Padam Singh – CRM-M-9327 of 2022*** decided by a co-ordinate Bench of this Court on 14.03.2022, and ***M/s Sebro Machine Tools Pvt. Ltd. and others Vs. M/s Jyoti Industrial Corporation, Law Finder Doc Id#1820952***.

5. Having considered the submissions of both the sides at length and having perused the record, I find merit in these petitions. Perusal of the examination of CW1 – complainant – Kuldip Singh (Annexure P.3) reveals that in his testimony, apart from other documents, he has relied upon two agreements Ex.C1 and Ex.C2. During cross-examination, he admitted to have brought original of Ex.C2 but not that of Ex.C1. His cross-examination was deferred but still he did not bring the original of Ex.C1. Objection with regard to admissibility of Ex.C1 was raised there and then by the defence counsel and the Court kept the question open. During further cross-examination, CW1 admitted to have transferred an amount of ₹36 lacs in the account of the accused and his

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wife by way of RTGS in 2014. Specific suggestions were given to him that agreements to sell in question were forged and fabricated documents and that handwriting and signatures on Ex.C1 were different, which suggestions were denied by the complainant – CW1. In his statement recorded under Section 313 Cr.P.C., accused took the defence in consonance with the questions put to CW1 in cross-examination to the effect that agreements to sell in question were forged and fabricated documents and that only an amount of ₹36 lacs had been transferred in the account of the accused and his wife and that cheques were issued as security, which have been misused by the complainant, as the same were in possession of one Amrinder Singh. It was also stated that the complainant is in the business of finance and used to give money on interest basis and that an amount of ₹36 lacs was paid for the said purpose. To support this defence, learned counsel for the petitioner has also referred to the rear of the agreement, in which it is mentioned that an amount of ₹36 lacs has been received by the complainant in December, 2014, which fact has also been admitted by CW1 in his cross-examination.

6. In the face of above-said circumstances, i.e. specific stand taken by the accused to the effect that agreements in question were forged and fabricated documents, accused was within his right to move an application for getting the agreements examined through handwriting expert and, therefore, the application moved by him to that effect has been wrongly rejected by the trial Court. Accused must have been given

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the right to prove/ probabalise his defence. It was not a case that accused tried to delay the proceedings or took the stand inconsistent with his statement under Section 313 Cr.P.C.

7. *Sudhir Kumar's case (supra)* and *M/s Sebro Machine Tools Pvt. Ltd. and others' case (supra)*, relied by Ld. Counsel for the respondent, are on different footing, as in those cases, handwriting and ink used on the cheques were disputed by the accused and so, his application for examination of handwriting expert was dismissed, as he had admitted the same on the cheques. In this case, accused- petitioner wants to examine the handwriting expert to prove his defence that agreements in question are forged and fabricated, which agreements are apparently the basis of entire case.

8. On account of aforesaid discussion, all the present petitions are hereby allowed. The respective impugned orders dated 20.08.2021 passed in all the cases are set aside.

**February 15, 2023**  
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**(DEEPAK GUPTA)**  
**JUDGE**

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