

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

CRM-M-44938-2019

Date of Decision:23.03.2023

Rajesh Rana

... Petitioner

Versus

M/s Babu Ram Ishwar Chand

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ramesh Hooda, Advocate
for the petitioner.

Mr. Arun Bansal, Advocate
for the complainant.

Manjari Nehru Kaul, J.(Oral)

The prayer in this petition is for quashing of the order dated 07.08.2019 (Annexure P-5) passed by the learned JMIC, Karnal in Criminal Complaint No.423 dated 10.10.2014/20.02.2016 under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') whereby an application filed by the petitioner/accused to examine the fingerprint and handwriting expert has been dismissed.

Learned counsel for the petitioner *inter alia* contends that the impugned order dated 07.08.2019 had been passed without considering the mandatory provisions prescribed under Sections 243 Cr.P.C. and 247 Cr.P.C. The application for leading defence evidence could be rejected only if it was made for intentionally delaying the trial or for defeating the ends of justice but no such finding had been recorded by the learned Trial Court. The said application had been dismissed only on the ground that since the accused had admitted to his

signatures on cheque, the examination of the expert witness was not required for the comparison of the writing on the body of the cheque in question with the handwriting of the signatory. He also referred to an order of this Court in another complaint filed against the petitioner, wherein a similar prayer had been disallowed but this Court vide order Annexure P-5 had quashed the order of the Trial Court.

Per contra, learned counsel for the respondent while opposing the prayer and submissions made by counsel opposite submits that the complaint under 138 of the Act has been pending since 2016 and the petitioner had been attempting to stall the same on some pretext or the other. It has further been submitted that it is the admitted case of the petitioner himself that he had issued the signed cheque to one Subhash Chand as security, who had thereafter misused it in connivance with the respondent. Learned counsel has argued that once the issuance of a signed cheque had been admitted, the application of the petitioner has been rightly declined in the light of the judgment of the Hon'ble Supreme Court rendered in **Bir Singh Versus Mukesh Kumar, 2019 (2) RCR (Criminal) 1.**

Heard learned counsel for the parties at length and perused the relevant material available on record.

While dealing with the issue of examining a Finger Print and Handwriting Expert, the Hon'ble Supreme Court in **T. Nagappa Versus Y.R.Muralidar, 2008(3) RCR. (Criminal) 926**, has held as under:

3. On or about 1.8.2006, the appellant filed an application under Section 243 of the Code of Criminal Procedure wrongly mentioned as Section 293 of the Code of Criminal Procedure, 1973 for referring the cheque in question for examination by the Director of Forensic Science

Laboratory for determining the age of his signature, contending that the respondent had obtained a signed cheque from him in the year 1999 as a security for a hand loan of Rs. 50,000/- which had been paid back, but instead of returning the cheque, the same has been misused by entering a huge amount, which he did not owe to the appellant.”

7. When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it.

An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognised by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, which reads as under :

"Section 243 - Evidence for defence. - (1) ..

(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice."

8. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bonafide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or

summon witnesses whose evidence would not be at all relevant.

9. The learned Trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of Section 20 of the Negotiable Instruments Act. The very fact that by reason thereof, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bonafide.

The issue now almost stands concluded by a decision of this Court in Kalyani Baskar (Mrs.) v. M.S. Sampooranam (Mrs.), 2007(1) RCR (Criminal) 311 : 2007(1) RAJ 68 : [(2007)2 SCC 258] (in which one of us, L.S. Panta, J., was a member) wherein it was held :

"12. Section 243(2) is clear that a Magistrate holding an inquiry under Criminal Procedure Code in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

10. However, it is not necessary to have any expert opinion on the question other than the following :

"Whether the writings appearing in the said cheque on the front page is written on the same day and time when the said cheque was signed as "T. Nagappa" on the front page as well as on the reverse, or in other words, whether the age of the writing on Ex.P2 on the front page is the same as that of the signature "T.Nagappa"

appearing on the front as well as on the reverse of the Cheque Ex.P2 ?"

Thus, what flows from ***T. Nagappa's*** case etc. (supra) is that when a contention is raised that the complainant has misused the cheque by filling up the body of the same, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof even if a presumption is raised under Section 118(a) or 139 of the Negotiable Instruments Act. As the law places burden on the accused, he must be given an opportunity to discharge it.

Even when the signatures of the accused have been acknowledged on a cheque, the complainant in all likelihood would withhold the information that the body of the cheque was filled by him or by someone else, at his direction. In case, the signatures on the cheque are admitted by the accused, it would be available to him to rebut the presumption under Section 139 of the Act by examining a handwriting expert to testify that the body of the cheque in question had not been filled up by the accused, who had admitted his signatures.

Undoubtedly, the holder of the cheque has the authority to fill the cheque and it would be a valid instrument, however, if the permission to examine the handwriting expert is not granted, merely on the ground that the holder has the authority to fill the body of the cheque, then the accused would not be able to establish his defence that the cheque issued as security, had been filled up by someone other than him and thus, misused. It would be unfair to shut out the defence of the accused at the very threshold by not permitting the examination of the handwriting expert as to the handwriting in the cheque in question.

As a sequel to the above discussion, in particular to the law laid down in *T. Nagappa's* case (supra), this Court finds merit in the instant petition. The application of the petitioner-accused is allowed and the impugned order dated 07.08.2019 (Annexure P-5) passed by the learned JMIC, Karnal in Crl. Complaint No.423 dated 10.10.2014/20.02.2016 registered under Sections 138/141/142 of the Act is hereby quashed.

The petitioner-accused shall examine the handwriting expert as a defence witness within a period of four weeks from the date of receipt of a copy of this order and the Trial Court shall endeavour to conclude the trial expeditiously preferably within a period of eight weeks thereafter.

(MANJARI NEHRU KAUL)
JUDGE

23.03.2023
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Whether reportable or not?	Yes/No
Whether speaking or not?	Yes/No