

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

CRM-M-20237-2018 (O&M)
Date of decision: 16.06.2023

Anjandeep Singh

...Petitioner

Versus

Harpreet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. T.P.S. Tung, Advocate for the petitioner

Mr. Amandeep Singh, Advocate for the respondent

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 05.04.2018 passed by learned Sessions Judge, Ludhiana, dismissing the revision petition filed against the order dated 28.10.2017, vide which the learned Judicial Magistrate, 1st Class, Ludhiana, dismissed application filed by the petitioner for appointment of handwriting expert.

2. Brief facts that emerge from the complaint are that the petitioner approached the respondent for taking financial assistance and received Rs. 2,50,000/- on 16.04.2013 with an assurance to return the same within a period of four months. In order to discharge part of his legal liability, he issued a cheque for Rs. 2,00,000/-, which on presentation got dishonored bearing remarks "funds insufficient." After serving notice upon the accused, the complaint in question was filed, to which the petitioner pleaded not guilty.

3. Learned counsel has contended that the body of the cheque was not

filed by him but by the complainant-respondent. The said cheque was given for the purpose of security mentioning the amount as Rs.1 lac in numeric. The rest of the body was blank. The writing is not of the petitioner and after altering the amount from Rs.1,00,000/- to Rs.2,00,000/- the same was presented in the Bank. Thus, he prayed for getting the said cheque examined from a handwriting expert, for which one opportunity is sought.

4. On the other hand, learned counsel for the complainant-respondent submitted that no question was put regarding alteration of cheque in the cross-examination by the petitioner. Still further, that the expert will also not be able to opine that the alteration was at the hands of the complainant or the petitioner. The Courts below have rightly dismissed the application, which has been filed merely to delay the proceedings.

5. Heard and perused the record.

6. It would be worthwhile to refer to the impugned order passed by the trial Court while dismissing the application filed by the respondent, the relevant paras of which read thus:

“5. First of all, it is pertinent to mention here that the cheque in question has been dishonoured by the bank on the ground of “insufficient funds” and not on the ground of “Alteration requires Drawer’s Authentication”, which means that the bank found no alteration over the cheque in question. Moreover, if for the sake of arguments, we assume that there is alteration over the cheque in question, even then, ld. Counsel for the ac/applicant failed to explain that how it can be proved that the alteration on the cheque in question has been made by the complainant and not by the accused. It could have been made by anyone of them. Hand writing expert can give his opinion only with regard to the fact of alteration but not with regard to the fact that who has made the alteration. Further, accused/applicant nowhere denied his signatures over the cheque in question. It is pertinent to mention here that the controversy under Section 138 of Negotiable Instruments Act is related to the fact that whether the cheque in question was issued by the accused or not or whether the same has been issued against any existing liability. Since the accused admitted

his signatures on cheques in question, then there exist no ground to examine the handwriting to prove the handwriting of the cheque in question as it is not necessary under law that the document should also have been written by the person who has signed the same to make the same admissible in evidence. Xx

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6. On the basis of all the above mentioned fact, this court finds the present application as nothing but an abuse to the process of law which has been filed just to delay the proceedings of the case. Hence, the application is hereby declined. However, nothing mentioned herein shall have any bearing/effect upon the merits of the case.”

7. Hon’ble The Supreme Court in the case of **Oriental Bank of Commerce vs. Prabodh Kumar Tewari**, 2022 SCC OnLine SC 1089, observed that, “A drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The presumption arises under Section 139.” Further held that, “For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.”

8. It would be apposite to refer to Section 311 Cr.P.C., which reads thus:-

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

9. No doubt the power conferred on the court under the above provision is wide and wholesome to summon any person or even recall witnesses for re-examination or further examination, necessary in the interest of justice, if the facts and circumstances call for, so as to arrive at a just decision of the case but the said power has to be used with due circumspection.

10. Recourse may be had by the Courts to power under Section 311 CrPC only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision as held by Hon'ble The Supreme Court in **Zahira Habibulla H. Sheikh vs. State of Gujarat**, 2004 (4) SCC 158, which in the present case the revisional Court rightly upheld the order of the trial Court declining the prayer, finding it not essential to examine the handwriting expert and observed thus:

“5. After considering the submissions made by both the sides, I am of the view that as per version of complainant on 15.4.2014 revisionist approached the respondent for taking financial assistance and received Rs. 2,50,000/- on 16.4.2013(sic 16.4.2014) with an assurance to return the same within a period of four months. He also executed acknowledgement on 16.4.2014. In order to discharge part of his legal liability, the revisionist issued cheque No. 79274 dt. 21.8.2014 for Rs. 2,00,000/- drawn on IDBI Bank, Feroze Gandhi Market, Ludhiana. The respondent duly presented the said cheque but the same was dishonoured by the banker of revisionist with memo dt. 22.8.2014 bearing remarks “funds insufficient”. Thereafter the respondent sent legal notice on 10.9.2014 through registered post but inspite of receipt of said notice, the revisionist failed to make payment of the cheque amount. On appearance, notice of accusation was served upon the revisionist to which he pleaded not guilty and claimed trial. In support of his case, respondent himself appeared as CW1 and closed his evidence. Statement of revisionist under section 313 Cr.P.C. was also recorded. In defence, the revisionist examined Sanjay Kumar as DW1. Earlier an application was moved by the revisionist under section 311 Cr.P.C. for recalling complainant Harpreet Singh for further cross-examination. Same was dismissed. Now this application is moved for appointment of handwriting expert to inspect the handwriting on the cheque with signatures of the accused and to inspect the

alteration of cheque amount as mentioned in numeric in the body of cheque. It is the specific case of the revisionist that he issued cheque with his signatures and had mentioned the amount of Rs. 1,00,000/- in numeric and rest of the body of cheque was blank. Respondent had altered Rs. one lac to Rs. Two lacs in figure and wrote Rs. Two lacs in words and filled in other body of the cheque. Said part is not written in the hand of the revisionist. So said handwriting is to be got inspected from handwriting expert to prove alterations. It is not the case of the respondent that body of the cheque was written by the revisionist himself. Specific stand of the respondent is that revisionist in discharge of part of his legal liability to return the amount, issued cheque under his signatures. As per section 20 of the Negotiable Instruments Act, when a person signs and delivers to another an instrument either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete the said instrument for any amount specified therein. A person so signing shall be liable for such instrument. Ld. Trial court had relied upon case law titled **Chinthala Cheruvu Vs. State of Andhra Pradesh, 2008(1) CrI. C.C. 391** wherein it is held that an implied authority is given to the holder of cheque at the time of entrusting a blank cheque containing the signatures of the drawer of the cheque alone, to fill the columns therein. Moreover no question is put to the respondent in his cross-examination about the version now to be proved through handwriting expert. As per section 18 of the Act, if the amount undertaken or ordered to be paid is stated differently in figures and words, the amount stated in words shall be the amount undertaken or ordered to be paid. Thus even if there is difference between the amount written in figures and words, the amount written in words is to be taken into consideration. Ld. Trial court has rightly held that application was filed just to delay the proceedings of the case. The impugned order passed by Ld. Trial court is in accordance with law and does not call for any interference.”

11. The Courts below have taken due care by not exercising the power under this section, as no plausible justification or explanation was given by the petitioner to examine the handwriting expert and as held by Hon'ble The Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation**, (2019) 14 SCC 328, the power under Section 311 CrPC should be exercised only for strong and valid reasons and with great caution and circumspection. Considering the facts and circumstances of the case in light of the

aforesaid principles, this Court finds no illegality or perversity in the impugned orders passed by the Courts below and do not call for any interference by invoking the jurisdiction under Section 482 Cr.P.C. Accordingly, the present petition being bereft of merits is dismissed.

(AMAN CHAUDHARY)
JUDGE

May 24, 2023
M.Kamra

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