

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

125

2023:PHHC:164133

CRM-M-61157-2023

Date of decision: December 19th, 2023

Rohit Kumar

.....Petitioner

Versus

Kirpal Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

Petitioner is seeking quashing of order dated 20.09.2023 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri in case bearing No.NIA/580/2018 titled as 'Kirpal Singh Versus Rohit Kumar', whereby the application filed by the petitioner seeking examination of handwriting expert has been dismissed.

2. Learned counsel for the petitioner, *inter alia*, contends that the trial Court gravely erred in dismissing his application, whereby he had sought examination of the handwriting expert, without appreciating the material on record. Learned counsel has further stressed that it was the consistent stand of the petitioner that there was no legally enforceable debt in existence towards the complainant, and the cheque in question, which had been issued to one of the contractors as a security cheque, had instead been misused. While drawing the attention of this Court to Annexure P-2, learned counsel has further argued that even while recording his statement under Section 313 of the Cr.P.C., the petitioner had deposed to the said effect. It has been submitted that

on the other hand, during his cross-examination, the respondent-complainant had falsely stated that the body of the cheque had not been filled in by him when he was questioned about the handwriting on the cheque. Learned counsel has argued that given the denial by the respondent-complainant of his involvement with respect to the handwriting in the body of the cheque, the examination of a handwriting expert was essential in order to rebut the presumption under Section 139 of the Negotiable Instruments Act as well as for substantiating the misuse of the security cheque.

3. I have heard learned counsel for the petitioner and perused the relevant material on record.

4. While dealing with a similar issue with respect to examination of a handwriting expert for the purpose of proving that the body of the cheque had not been filled up by the drawer, the Hon'ble Supreme Court in *Criminal Appeal No.1260 of 2022* titled as *Oriental Bank of Commerce Versus Prabodh Kumar Tewari and others* has held as under:-

“4. The respondent admits that he signed and handed over a cheque to the appellant. According to the respondent a signed blank cheque was handed over by him. The question which arises in the appeal is whether the High Court was correct in permitting the respondent to engage a hand-writing expert to determine whether the details that were filled in the cheque were in the hand of the respondent. For the reasons set out below, we have allowed this appeal against the order of the High Court for the reason that Section 139 of the NI Act raises a presumption that a drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or

liability. The evidence of a hand-writing expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing expert.”

“17. 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.”

5. Therefore, what flows from *Prabodh Kumar Tewari’s case (supra)* is that whether the drawer filled in the details on the cheque or not, it would not affect the presumption under Section 139 of the N.I. Act, holding the drawer accountable even if someone else filled in the other details in the cheque. Hence, the report by a handwriting expert would not be able to challenge the presumption under Section 139 of the N.I. Act. Adverting to the instant case, the evidence of the handwriting expert qua the body of the cheque, even if accepted, would not in any manner aid the case of the accused. Furthermore, the impugned order reveals that the application seeking permission to examine the handwriting expert was moved at a highly belated stage when the defence evidence was underway and that too, after the petitioner-accused had availed of as many as four effective opportunities.

6. As a sequel to the above, this Court does not find any merit in the instant petition.
7. Dismissed.
8. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 19th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No