



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

CRM-M-6547-2019
Date of decision: 19.09.2024

Sandeep Rathi

...Petitioner

Versus

Pardeep Sheokand

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Vikas Kumar, Advocate for the petitioner.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner/accused under Section 482 Cr.P.C seeking quashing of order dated 17.05.2018 Annexure P-5 passed by the Court of Judicial Magistrate Ist Class, Faridabad vide which the application filed by the petitioner seeking permission to examine the hand writing expert for comparing hand writing appearing in the cheque in question with the hand writing of respondent/complainant on statements of account prepared by the respondent, was dismissed and order dated 01.02.2019 Annexure P-6 passed by the Court of Additional Sessions Judge, Faridabad whereby the revision petition filed against order Annexure P-5 was dismissed.

2. The brief facts of the case are that respondent/complainant filed criminal complaint against the present petitioner under Section 138 NI Act alleging that cheque No.000018 dated 13.08.2016 for Rs.6,00,000/- drawn on HDFC Bank limited Greater Kailash-II, New Delhi which was issued by the petitioner in discharge of his legal liability, was dishonored on its presentation.

3. In the said criminal complaint, the petitioner was summoned as an accused and was served notice of accusation and to which he pleaded not guilty and then, complainant led his evidence and petitioner was examined under Section 313 Cr.P.C. At that stage, petitioner filed an application (Annexure P-2) for grant of permission to examine the hand writing appearing in cheque in dispute and to compare the same with the hand writing appearing in statement of accounts. The said application was dismissed by the learned trial Court vide order dated



17.05.2018 Annexure P-5. The revision petition filed against order Annexure P-5 was dismissed by the revisional Court vide order Annexure P-6 dated 01.02.2019.

4. The counsel for the petitioner while assailing the impugned orders Annexure P-5 and Annexure P-6, submits that petitioner is running a health supplement shop and respondent/complainant was working in the said shop as an employee of the petitioner. In May and June 2016, the petitioner fell ill and the entire business of petitioner was managed by the respondent, who used to make entries in the account books of the shop, in his own hand during the period, the petitioner was unable to attend his business. It is further submitted that certain blank signed cheques of petitioner were lying in the shop and during the aforesaid period, respondent who was managing the shop, committed theft of one such signed cheque and misused the same and filed the aforesaid criminal complaint by filling the body of the said cheque without consent of the petitioner. Counsel for the petitioner further submits that petitioner also lodged DDR with regard to aforesaid theft. The counsel for the petitioner further submits that application Annexure P-2 was filed by the petitioner before the trial Court seeking permission to get compared the hand writing appearing in the body of cheque in question with the hand writing appearing in the account books of the shop of the petitioner relating to aforesaid period. The counsel for the petitioner further submits that petitioner is not disputing his signatures on the cheque in question. It is further submitted that the trial Court dismissed the aforesaid application by simply observing that once the accused has admitted his signatures on the cheque, he cannot escape his liability on the ground that the same was not filled by him. The counsel for the petitioner further submits that revisional Court dismissed the revision petition mainly on the ground that the concerned application was filed by the petitioner after availing number of opportunities to lead defence evidence, just to unnecessarily prolong the proceedings. The plea of counsel for the petitioner is that the respondent denied his hand writing in the said account books when the same were put to him in his cross examination. The counsel for the petitioner further submits that in the given circumstances, the impugned orders deserve to be set aside and the application Annexure P-2 may be allowed, as petitioner/accused has a right to defend himself by leading evidence by examining the hand writing expert in order to establish his defence.

5. From the perusal of impugned orders Annexures P-5 and P-6, it appears that in both the said orders there is no mention that petitioner has made



request for getting compared the hand writing appearing in the concerned account books with the hand writing appearing in the body of the cheque in question.

6. In light of the above, this Court is of the view that the impugned orders are not sustainable and deserve to be set aside.

7. For the foregoing reasons, the present petition is allowed and impugned orders are set aside with direction to the learned trial Court to decide the matter afresh in accordance with law while taking into consideration the fact that the petitioner intends to examine and compare the hand writing appearing in the body of the cheque with the hand writing of the entries which are there in the account books of the shop of the petitioner. The petitioner is directed to appear before the learned trial Court on the date already fixed in the trial.

8. However, it is made clear that any observation made herein above is not to be construed as an expression of opinion on the merits of the case. Further, the present order is subject to proof of employment of respondent under the petitioner in his shop. Furthermore, if the application Annexure P-2 is allowed by the learned trial Court, after hearing both the parties, in that case, apart from the aforesaid examination of both the hand writings, the same are also to be compared with the admitted standard hand writing of the respondent, which is to be taken in the trial Court in presence of the Presiding Officer.

9. Keeping in view the nature of order being passed, no notice is required to be issued to the respondent. However, if he feels dis-satisfied with this order, he may move an application to recall the same.

19.09.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No