



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

**CRR-500-2023 (O&M)
Date of Decision- 05.09.2024**

DARSHANA DEVI

.....PETITIONER

VERSUS

HARPAL

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Rishu Bajaj, Advocate
for the petitioner.

Mr. Kunal Dawar, Advocate and
Mr. Mayank Aggarwal, Advocate
for the respondent.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 401 Cr.P.C for setting aside the impugned order dated 07.02.2023 passed by the learned Judicial Magistrate Ist Class, Faridabad, in Criminal Complaint bearing No. COMI-586-2015 dated 18.09.2015 under Section 420, 406, 467, 468, 471, 120B/34 of the Indian Penal Code, dismissing the application filed by the accused-petitioner to seek expert opinion qua the signatures on the cheque in question dated 20.05.2011 from a Government agency.

2. Factual matrix of the case unfolds that complainant filed a complaint against the petitioner in the office of Sub-Registrar, Faridabad that inadequate/less stamp duty has been paid by the petitioner w.r.t. the sale deed



dated 15.02.2011, however the said complaint was found to be frivolous by the District Revenue Officer-cum-Collector, Faridabad, and the complaint was disposed off as such. Meanwhile, in the interregnum the respondent/complainant also concocted another story that the petitioner had issued a cheque bearing Nol.627617 amounting to Rs.34,50,000/- (Rs.Thirty Four lacs Fifty thousands only) dated 20.05.2011 drawn on Punjab National Bank in favour of the complainant/respondent, which was issued as part of the transaction leading the execution of the sale deed dated 15.02.2011 and on presentation of the cheque with the banker, it was returned as unpaid on 23.05.2011. Again, on its presentation, it was again returned as unpaid on 30.08.2011 and also on 10.10.2011 with the remarks "Insufficient Funds". Thereafter, complaint under Section 138 of Negotiable Instruments Act, 1881, (for short 'NI Act') was filed. During the course of proceedings of the complaint, Sh.Naresh Kataria s/o Sh.S.R.Kataria was called upon to give his expert opinion with respect to the signatures on the cheque in question, who has given his opinion to the effect that the signatures on the cheque in question were not of the petitioner and were, in fact, forged signatures.

3. It is contended by the learned Senior Advocate on behalf of the petitioner that the impugned order dated 07.02.2023 passed by the learned Judicial Magistrate Ist Class, Faridabad (for short – 'trial Court') is prima facie illegal and erroneous as the learned trial Court has failed to appreciate that the expert opinion in the matter is necessary to reach just and proper adjudication of the controversy involved in the matter. Thereafter, in view of the handwriting expert report,(Annexure P-5) the complainant sought the withdrawal of his complaint and the prayer for withdrawal of the complaint



was allowed vide order dated 06.09.2014, Annexure P-6. However, even after withdrawal of the complaint, the complainant has in order to harass the petitioner with malicious and mischievous intention has filed a false and frivolous complaint, Annexure P-7, on 18.09.2015 under the above sections before the Illaqa Magistrate, Faridabad, wherein the petitioner has been summoned as accused vide order dated 05.12.2016, Annexure P-8. The complainant has filed one application on 16.11.2022 for summoning one Handwriting Expert namely Satyadev Aggarwal s/o J.K. Aggarwal of Palwal, for examining the cheque dated 20.05.2011 (C-1). The application was contested by the petitioner by raising objections that the application to summon the handwriting expert has been moved at a belated stage; the report of handwriting expert namely Sh. Naresh Kataria was already on record in the proceedings initiated under Section 138 of the NI Act so re-examination of the cheque was not needed; and that the handwriting expert sought to be summoned is not a trust-worthy witness as he is already facing a criminal case against him under the order of the Court. However, the learned trial Court has, even then, allowed the application for summoning the handwriting expert - Satyadev Aggarwal, vide order dated 21.12.2022, Annexure P-11, and the handwriting expert submitted his report wherein he concluded that there was variation in the specimen signatures and those on the cheque. During the cross-examination, several contradictions in the report came to light and the report became very shady and report was found to be not a conclusive report. Vide order dated 02.02.2023, Annexure P-14, the learned trial Court framed charges whereafter the petitioner filed an application to seek permission to seek expert opinion qua the signatures on the cheque from



Government Agency, and the application has been dismissed, vide order dated 07.02.2023, which is under challenge in the present petition because the order passed by the learned trial Court is prima facie illegal and erroneous being without application of judicious mind and without appreciating that there are two expert opinions which differ from each other, therefore, third opinion would be necessary in the matter.

4. Learned Senior Advocate appearing for the petitioner contends that the trial court has failed to appreciate the material facts of the case wherein the creditworthiness of Sh. Satyadev Aggarwal, handwriting expert is doubtful. Further, Section 45 of the Indian Evidence Act, 1872 does not bar reports from more than one expert, in fact, a perusal of section 45 would show that the provision permits the court to call for more than one report on a particular issue.

5. He vehemently argues that the trial court has erred in dismissing the application in question without taking into consideration the fact that the respondent-complainant itself preferred a reply to the application wherein he had clearly stated that he would have no objection if the Hon'ble court deems fit to get the comparison done from any government expert.

6. On the other hand, learned counsel for the respondent has contended that the learned trial Court has rightly dismissed the application filed by the petitioner because if the application is allowed then there will be no end to this process because each side will file repeated applications to seek expert opinion of its choice. Further, the registration of criminal case against Mr.Satyadev Aggarwal has nothing to do with extending his expert opinion in the present case. The earlier report submitted by the Handwriting Expert was



in different proceedings which cannot be considered in the present proceedings. As such, the present petition is liable to be dismissed.

7. Heard learned counsel for the respective parties at length and meticulously gone through the case file.

8. After going through the case file and facts of the case in hand, this Court is of the opinion that no harm will be caused in getting a third opinion from the Government Agency regarding the signatures on the cheque because the first opinion/report received from Mr.Naresh Kataria in the proceedings of the complaint under Section 138 of NI Act states that the signatures are forged and thereafter the complaint was withdrawn by the complainant. However, instead of accepting the report of Handwriting Expert (Mr.Kataria), the complainant chose to file Criminal Complaint (being COMI-586-2015 dated 18.09.2015 under Section 420, 406, 467, 468, 471, 120B/34 of the Indian Penal Code) and also prayed for Handwriting Expert report from an Expert (Mr.Satyadev) of his own choice. Though, the report of Mr.Satyadev is not a conclusive report because a perusal of the report would show that Mr.Satyadev has attempted to bring the signatures on the cheque in the close proximity of the signatures on the cheque in question yet the learned trial Court proceeded to frame charge against the petitioner, which shows that the learned trial Court has accepted the non-conclusive report of Mr.Satyadev as conclusive.

9. As such, it will be in the fitness of things and in the interest of justice to have another fresh opinion from a Government Agency in the matter so that none of the parties have any grouse left with respect to the veracity of the signatures on the cheque in question.



10. This Court has also gone through the order relied by the petitioner dated 21.09.2023 passed by a Co-ordinate Bench of this Court in CRM-M-13671-2023 titled as “Vijay Taneja Vs. Naresh Gureja” wherein order passed by the learned JMIC, Gurugram, was challenged by the complainant/petitioner and quashed by this Court by observing as under :-

“13.On an application moved, the Trial Court has rejected the same stating that there was no necessity of sending the said cheque to the FSL since a cheque had already been examined by a private expert. This in my opinion is an erroneous finding. The object of a Trial is to do justice to all side and come out with the unvarnished truth. In the instant case, the argument raised by the petitioner that a private expert shall invariably give a report in favour of the person engaging him for his services cannot be negated. In fact, it is with a view to secure the ends of justice, it would be appropriate if the signature on the cheque in question is examined by the experts at FSL Madhuban so that a report in that regard is presented before the Trial Court who shall then proceed to adjudicate upon the matter in accordance with law.

14. In view of the aforementioned discussion, the order dated 16.02.2023 (Annexure P-2) stands quashed and (Annexure P-6) was allowed. Subsequent to the obtaining of the report, the Trial Court is directed to conclude the trial as expeditiously as possible as the complaint pertains to the year 2017.”

..... (emphasis supplied)

11. However, in the case in hand, surprisingly the learned trial Court has dismissed the application of the petitioner without taking into consideration the defence of the petitioner wherein it is admitted that signatures on the cheque have not been admitted and rather denied. Therefore, it becomes utmost necessary for the trial Court to know the veracity of the



disputed signatures before proceeding with the matter.

12. Accordingly, this Court is also of the view taken by the Co-ordinate Bench in CRM-M-13671-2023 that both the sides must get justice. Even otherwise, both the sides are going to lose nothing if the opinion/report of Government Agency in the matter is obtained by the learned Trial Court, to do justice to the parties in the matter.

13. Consequently, the petition in hand is allowed and the impugned order dated 07.02.2023 passed by the learned Judicial Magistrate Ist Class, Faridabad, in Criminal Complaint bearing No. COMI-586-2015 dated 18.09.2015 under Section 420, 406, 467, 468, 471, 120B/34 of the Indian Penal Code, is hereby quashed and the application at Annexure P-15, stands allowed.

14. The trial Court is directed to proceed in the matter in view of this order and subsequent to receipt of the report from the Government Agency, to conclude the matter as expeditiously as possible, as the criminal complaint in this case is of the year 2015.

15. With the disposal of the main case, any application, if pending, shall also be disposed off as having become infructuous.

16. Accordingly, ordered.

(SANDEEP MOUDGAL)
JUDGE

05.09.2024
anuradha

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