



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-8397-2024 (O&M)
Date of Decision: 23.7.2024

Brij Mohan Sharma ... Petitioner
Versus
Danesh Malhotra ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Amit Dhawan, Advocate for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 20.10.2023 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Jalandhar, vide which an application filed by him seeking permission to get the body writing on the cheque in question examined from handwriting expert has been declined.
2. A few facts necessary to notice are that respondent – Danesh Malhotra instituted a complaint i.e. complaint case No.NACT/7812/2017 dated 12.12.2017 titled “Danesh Malhotra Versus Brij Mohan Sharma” under Section 138 of Negotiable Instruments Act against the petitioner alleging therein that he had advanced an amount of Rs.10 lakhs in August, 2014 to the petitioner out of which an amount of Rs.7 lakhs was transferred from the bank account of the complainant to the bank account of the accused/petitioner i.e. account No.32467670397 and that the remaining amount of Rs.3 lakhs had been paid in cash. Although an amount of Rs.1 lakhs was paid back by the accused to the complainant in December, 2016 but the outstanding



amount of Rs.9 lakhs was not paid and upon repeated requests the accused/petitioner issued a cheque No.250105 dated 3.11.2017 for an amount of Rs.9 lakhs, which upon its presentation in the bank was dishonoured.

3. Pursuant to recording of preliminary evidence, the accused/petitioner was summoned by the Trial Court. Substance of allegations were served upon the accused. The matter was lingering on for several years and when the matter was at the stage of examining the accused in terms of provisions of Section 313 Cr.P.C., an application was moved by the accused/petitioner seeking permission to get the cheque in question examined from handwriting expert particularly as regards the body writing on the cheque in question.
4. The specific grounds raised in para Nos.2 & 4 of the application are reproduced hereinunder:

“2. That the complainant manipulated the cheque, by filling the cheque by its own with different handwriting. The signature is of different ink and body of cheque is of different handwriting. The cheque in question is disputed one. There is no legal liability of the accused towards the complainant. After manipulating the cheque, the complainant had filed a false complaint in the court. The body of the cheque is of different handwriting with different ink. As such, the cheque in question is not a valid cheque.

4. That in order to compare the Handwriting on the cheque with regard to body of the cheque and date, it is necessary to obtain the photographs of the cheque and to compare the same with the other documents of the complainant which are already on the judicial file and to prove the fact that it has been filled by one person or more.”

5. The complainant filed his reply denying the averments made in the application. The Trial Court upon considering the application found no



ground to allow the same and consequently dismissed the application vide impugned order dated 20.10.2023.

6. Learned counsel for the petitioner, while assailing the impugned order, submitted that the cheque in question had infact never been issued by the petitioner to the complainant and has been misused by the complainant as would be evident from different handwritings on the cheque in question. Learned counsel for the petitioner, in order to hammer forth his aforesaid submissions, has referred to the cross-examination of the complainant, as has been reproduced in the petition, which is extracted hereinunder:

“it is incorrect to suggest that the cheque in question has been misused by me by filling the same. It is correct that the date has been written in different ink and the body of cheque is another in a different ink and signature is also in another different ink. Similarly, the handwriting on the date is of different hands and the body of the cheque is of different hands and the signatures of the cheque of different hands.....”

7. This Court has considered the aforesaid submissions.
8. It is noteworthy that the complainant is not denying his signatures but is trying to build up a case that the cheque in question was infact never meant to be used by the complainant, who has misused the same. During the course of arguments, learned counsel for the petitioner also submitted that since the body writing on the cheque in question is even denied by the complainant, therefore, the same is required to be examined.
9. Learned counsel for the petitioner has, however, been unable to explain as to how the cheque signed by the petitioner came in the hands of the complainant. The petitioner has not even explained as to on what count he had received the amount of Rs.7 lakhs in his bank account. Once the



signatures of the accused are not disputed, the accused was expected to come out with justifiable explanation with regard to the issuance of cheque in question. It is very convenient for any person to deny issuance of a cheque once the same is dishonoured.

10. Hon'ble the Apex Court in *Bir Singh Versus Mukesh Kumar, 2019(4) SCC 197*, held as under:

“42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.

43. In our considered opinion, the High Court patently erred in holding that the burden was on the appellant-complainant to prove that he had advanced the loan and the blank signed cheque was given to him in repayment of the same. The finding of the High Court that the case of the appellant-complainant became highly doubtful or not beyond reasonable doubt is patently erroneous for the reasons discussed above.”

11. The ratio of above referred judgment leaves no manner of doubt that a burden lies heavy on the person issuing the cheque particularly the accused who does not dispute the authenticity of the signatures to furnish a justifiable explanation as to how such cheque came into the hands of the complainant. The mere fact that body writing on the cheque in question has not been made



by the accused would not offer any kind of defence to the accused. In the absence of such explanation, the trial Court cannot be said to have committed any wrong in declining the application.

12. As such, this Court does not find any infirmity in the impugned order and the same is hereby upheld. Finding no merit in the instant petition and the same is dismissed.

23.7.2024
Pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No