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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12359-2021

Date of Decision: 20.08.2024

JAGJEET SINGH

... Petitioner

Versus

KULWANT KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. J.K. Singla, Advocate
for the petitioner.

Mr. Achin Gupta, Advocate
for the respondent.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 19.02.2021 passed by the JMIC, Bathinda in Criminal Complaint i.e. COMA No.2587 dated 25.07.2017 titled “Kulwant Kaur Vs. Jagjeet Singh” whereby applications moved under Section 311 Cr.P.C. have been dismissed.

2. The brief facts of the case are that the respondent/complainant (hereinafter known as the respondent) filed a criminal complaint under Section 138 of the Negotiable Instruments Act against the petitioner/accused (hereinafter known as the petitioner) that with a view to discharge his legal liability, the petitioner had issued a cheque No.018848 dated 19.05.2017 for an amount of Rs.3,85,000/- which had been dishonoured leading to the filing

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of a complaint under Section 138 NI Act and the consequential summoning order.

3. During the course of the Trial and at the stage of recording defence evidence, the petitioner moved his first application under Section 311 Cr.P.C. seeking permission to examine Shri H.S Mander, Handwriting and Fingerprint Expert, Barnala in order to elucidate the defence/qua the fabrication of the cheque by Sandeep Singh son of Ajmer Singh, Attorney of the complainant-Kulwant Kaur. The copy of the said application is attached as Annexure P-2 to the petition.

4. A second application under Section 311 Cr.P.C. was moved for calling upon Sandeep Singh son of Ajmer Singh, Attorney of complainant-Kulwant Kaur to give his specimen handwriting for comparison with the writing on the body of the cheque Ex.C1. The copy of the said application is attached as Annexure P-3 to the petition.

5. A reply was filed to the applications by the respondent. The copy of the said reply is attached as Annexure P-4 to the petition.

6. Based on the pleadings of both the parties the applications came to be dismissed vide impugned order dated 19.02.2021.

7. The aforementioned order is under challenge in the present petition.

8. The learned counsel for the petitioner with respect to his first application contends that on account of inadvertence, the expert witness could not be examined with respect to the fabrication of the cheque by

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Sandeep Singh son of Ajmer Singh and the Attorney and son of the complainant-Kulwant Kaur. The examination of the Handwriting and Fingerprint Expert was material and necessary for the just adjudication of the case and the complainant would not suffer any prejudice as she would have the right to cross-examine the said witnesses.

As regards the second application calling for Sandeep Singh to give his specimen writing for comparison with the writing in the body of the cheque Ex.C1, he contends that it was the consistent case of the petitioner that the cheque-book in question had been lost as was evident from DDR dated 27.04.2015 (Annexure P-9). Sandeep Singh was examined as CW1 and in his cross-examination, he has admitted that he was working as a Munshi at the brick kiln of Jagjeet Singh (petitioner). Suggestions had been put to him that he had seen the petitioner signing the cheques and that he had got signatures of the petitioner on various documents being a Munshi and some of them including the cheque in question had been misused by him and his mother Kulwant Kaur. Once the case of the defence was that there was a misuse of the cheque in question which might have been filled in by Sandeep Singh who was admittedly working as a Munshi with the petitioner, it was incumbent upon the Trial Court to have allowed the application calling upon Sandeep Singh to give his specimen writing for comparison with the writing in the body of the cheque. He, therefore contends that the impugned order was liable to be set aside and the prayers of the petitioner as set out in the applications be allowed.

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9. On the other hand, the learned counsel for the respondent contends that the only purpose of the petitioner who had moved these applications was to delay proceedings. The trial had proceeded to the stage of recording of defence evidence and it was only then that these applications had been moved. At no stage did the petitioner ever suggest that the cheque in question had not been signed by him and the defence taken is that the cheque-book had been stolen. Further, once the signature on the cheque was admitted it was well within the rights of a holder of the cheque to fill-up the said cheque in accordance with the amount due. He, therefore contends that there was no illegality in the impugned order and therefore, the present petition was liable to be dismissed.

10. I have heard the learned counsel for the parties.

11. As regards the application dated 27.02.2020 (Annexure P-2) seeking the examination of a private Handwriting and Fingerprint Expert, it may be pointed out that a perusal of the application does not in any manner suggest as to what the said witness wants to testify towards. The application is completely vague in that regard. However, reading between the lines if the intention of the petitioner is to dispute the signatures on the cheque, the same cannot be done at this stage as at no prior stage has the petitioner taken the stand that the cheque in question had not been signed by him. The only defence taken is that the cheque-book had been misplaced. Therefore, the impugned order to the extent that it has dismissed the first application under Section 311 Cr.P.C. (Annexure P-2) cannot be faulted.



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12. As regards the application for calling upon Sandeep Singh to give his specimen writing for comparison with the writing in the body of the cheque Ex.C1 is concerned, there is force in the submission of the counsel for the petitioner. A perusal of the cross-examination of CW-1 Sandeep Singh would show that he remained as a Munshi at the brick kiln of Jagjeet Singh-petitioner. It has been specifically put to him in his cross-examination that he had obtained signatures of the petitioner on various papers being the Munshi of the brick kiln for completing formalities of the brick kiln business and one of the documents which he had got signed included the cheque in question which had been misused by his mother (complainant-Kulwant Kaur). Therefore, it is the case of the petitioner that it was Sandeep Singh who may have fabricated the writing on the body of the cheque.

13. In similar circumstances, this Court in the case of **Krishna Devi Shukla Versus K.S. Oil Limited, CRM-M-33407-2017, decided on 23.05.2022** has held as under:-

12. A perusal of the judgments in T. Nagappa's case etc. (supra), would clearly establish that when a contention is raised that the complainant has misused the cheque by filling up the body of the same, even in a case, where a presumption can be raised under Section 118(a) or 139 of the Negotiable Instruments Act, an opportunity must be granted to the accused for adducing evidence in rebuttable thereof. As the law places burden on the accused, he must be given an opportunity to discharge it.

The complainant will invariably not disclose that the body of the cheque has been filled up by him or at his instance even where the signatures on the cheque has been accepted by the



accused. Without doubt, the holder of the cheque has the authority to fill the same and the cheque would be a valid instrument but to start with, the first step available with an accused to rebut the presumption that the cheque had been issued for the discharge of a legally enforceable debt is by examining a handwriting to testify that the signatory and the author of the body of the cheque are different persons. Even if the difference in writing is established, the accused will still have to rebut the presumption under the Act, that the cheque is a valid tender and that he had made the payment to the complainant but despite that fact, the complainant filled up the cheque and presented the same leading to it's dishonouring. On the other hand, if the permission to examine the handwriting expert is not permitted on the ground that the holder has the authority to fill the body of the cheque, then the accused cannot even begin to establish his defence that a cheque issued as security has been filled up by someone other than him and misused. Thus, it would be unfair to shut out the defence of the accused at the threshold.

13. So far as the judgments of the Hon'ble Supreme Court in Bir Singh's case (supra) and Sampelly Satyanarayana Rao's case (supra) are concerned, those judgments do not deal with the issue of the examination of the cheque by a handwriting expert. They only reiterate the settled position of law that the signatory of the cheque need not fill in the body of the cheque for the cheque to be a valid cheque. Thus, these two judgments do not further the case of the complainant in any manner whatsoever. This Court in M/s Indo Swiss Time Limited Vs. Umraro & Ors. 1981 AIR (Punjab & Haryana) 213 has held that where there is a conflict between two judgments rendered by Benches of equal strength then the Courts are required to follow the judgment which appears to lay down the more elaborately and accurately.

14. In my opinion, the judgment in T. Nagappa's case (supra) lays down the law more elaborately and accurately than the



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judgments in Bir Singh's case (supra), which only reiterate the position of law that the signatory of the cheque need not filled in the body of the cheque for the cheque to be a valid cheque.

15. Keeping in view the aforesaid discussion, I have find merit in the present petition. Therefore, the application of the petitioner-accused is allowed and the order dated 26.05.2017 (Annexure P-1) and impugned order dated 09.08.2017 (Annexure P-2) are hereby quashed.

The petitioner-accused shall examine the handwriting expert as a defence witness within a period of four weeks from the date of receipt of a copy of this order and the Trial Court shall conclude the trial within a period of eight weeks thereafter.

(emphasis supplied)

14. In view of the aforementioned discussion and the judgment of this Court in **Krishna Devi Shukla** (supra), the order dated 19.02.2021 passed by the JMIC, Bathinda is partially set aside and the application of the petitioner dated 27.02.2020 (Annexure P-3) is allowed.

15. Pursuant to Sandeep Singh providing his specimen writing, the same along with the cheque in question be sent to the FSL, Madhuban for analysis/comparison and a report in that regard be presented before the Trial Court within a period of two months. The Trial Court is thereafter directed to conclude the Trial within a further period of two months.

16. The present petition is disposed of with the aforementioned directions.

(JASJIT SINGH BEDI)
JUDGE

20.08.2024

JITESH

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