

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 12.03.2024

CRM-M-12329-2024 (O&M)

Narinder Jain @ Goga Jain*Petitioner*

Versus

State of Haryana & another*Respondents*

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vishal Sharda, Advocate, for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 31.01.2024 (Annexure P-5) passed by the learned Additional Sessions Judge, Kurukshetra, whereby revision petition filed by the petitioner challenging order dated 05.08.2023 (Annexure P-4) passed by the learned Judicial Magistrate Ist Class, Pehowa declining an application filed by the petitioner for examining hand-writing expert, has been dismissed.
2. Petitioner – Narinder Jain @ Goga Jain is facing trial in respect of a complaint instituted under Section 138 of the Negotiable Instruments Act, wherein the complainant alleges that a cheque amounting to Rs.3 lakhs issued by the accused/petitioner to the complainant was dishonoured for the reason ‘Total Freeze’.
3. Learned counsel for the petitioner submitted that it is a case where the complainant alleges that the petitioner had borrowed an amount of Rs.3 lakhs from her on 01.11.2016 for his personal requirements and had assured

to repay the same within 6 months, but failed to repay the same. However, ultimately, the petitioner is alleged to have issued a cheque dated 01.08.2017 favouring the complainant for an amount of Rs.3 lakhs, which was dishonoured. It has been submitted that as a matter of fact a blank cheque was issued by the petitioner to the husband of the complainant for the purpose of donating some amount to a Saint and as such, even if the said cheque is dishonoured, it cannot be said that the same had been issued in discharge of some legally enforceable liability. Learned counsel submitted that the very fact that the body writing is in a different hand would establish the case of the petitioner, but the trial Court by declining permission to the petitioner to get the cheque in question examined from an hand-writing expert has virtually shut all the doors for the petitioner to establish his defence. Learned counsel, thus, submitted that the impugned orders passed by the learned Judicial Magistrate Ist Class as well as by the Revisional Court deserve to be set aside and the petitioner ought to be provided ample and sufficient opportunity to establish his case. Learned counsel in order to hammer forth his aforesaid submissions places reliance upon a judgment of Hon'ble Supreme Court reported as T. Nagappa Vs. Y.R.Muralidhar, (2008) 5 SCC 633 as well as a judgment rendered by Coordinate Bench in CRM-M-45064-2019 titled 'Rajesh Rana Vs. Parmod Kumar' decided on 13.06.2022.

4. This Court has considered the aforesaid submissions and has carefully gone through the impugned orders as well as other documents annexed with the petition.
5. The defence being set up by the petitioner is that the cheque in question had been issued not for the purpose of returning any loan, but for the purpose of making a donation to a Saint. Such like plea would be required to be

established by cogent and convincing evidence and for which the question as regards body writing upon the cheque would be immaterial. The judgments relied upon by learned counsel for the petitioner surely reiterate the well settled proposition of law that an accused has to be afforded justifiable opportunity to lead and establish his defence, but at the same time, it also goes without saying that the accused would be required to *prima facie* show that the witness sought to be examined does have a relevance with the defence plea sought to be substantiated by the accused or has a potential to demolish the case of the complainant.

6. In the present case, the mere fact that the body writing on the cheque in question is not of the accused or of the complainant and is in the hand of some 3rd person, would not have any bearing either on the case of the complainant or on the defence plea being set up by the accused. As such, this Court does not find any infirmity or illegality in the impugned orders and both are accordingly upheld. Finding no merit in the petition, the same is hereby dismissed.

12.03.2024

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(GURVINDER SINGH GILL)
JUDGE

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