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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19527-2024
Date of Decision:- 24.07.2024

JARNAIL SINGHPetitioner

Vs.

VAJINDER SINGH ...Respondent

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sanjeev Patiyal, Advocate for the petitioner.

Mr. V.K.Sandhir, Advocate for respondent.

AMARJOT BHATTI, J. (Oral)

1. Petitioner Jarnail Singh has filed petition under Section 482 Cr.P.C. for quashing order dated 22.02.2024 (P-6) passed by learned Judicial Magistrate 1st Class, Jagraon, District Ludhiana in complaint No.COMA 333/2019 PBLDB1-004513-2019 titled “Vajinder Singh Vs. Jarnail Singh” whereby application filed by petitioner seeking report of handwriting expert has been dismissed.
2. As per the facts of the case, Vajinder Singh filed complaint under Section 138 of Negotiable Instruments Act, 1881 (in short ‘NI Act’) against Jarnail Singh on the basis of cheque No.562677 dated 01.08.2019



for a sum of Rs.7 lakhs, drawn at Oriental Bank of Commerce, Branch Kishanpura Kalan from the account of accused/petitioner Jarnail Singh which was ultimately dishonoured vide memo dated 08.08.2019 with the report "Funds Insufficient". Legal notice was sent to the accused and finally the complaint was filed in which present petitioner was summoned. Case was fixed for defence evidence when present application was filed to examine handwriting expert by alleging that Bhupinder Singh through his wife Sukhwinder Kaur Commission Agent filed a false and frivolous application against him in the year 2018. Said Bhupinder Singh in order to grab his property misused the disputed cheque which was not signed by him. Both Bhupinder Singh and Vajinder Singh were close relatives. In fact said cheque does not bear his signatures. Therefore, he wants to examine handwriting expert in evidence.

3. Said application was opposed by the complainant denying the facts mentioned in the application. It is denied that any false application was filed through Sukhwinder Kaur wife of Bhupinder Singh. Said Bhupinder Singh and Vajinder Singh are not close relatives. Signatures on cheque in question are admitted by accused. Therefore, there is no need to examine handwriting expert.

4. After hearing arguments advanced by learned counsel for the parties, aforesaid application was dismissed by passing detailed order dated 22.02.2024. Feeling aggrieved of this order, present petition has been filed.

5. Learned counsel for petitioner argued that cheque in dispute is forged document and it does not bear his signatures. In order to prove this fact, he is required to examine handwriting expert. He has taken specific



stand when his statement was recorded under Section 313 Cr.P.C. which is Annexure P-4. Present petitioner has a right to fair trial. He is entitled for proper opportunity to lead his evidence in defence. To support his arguments he has cited judgment of **Hon'ble Apex Court in Kalyani Baskar Vs. M.S. Sampooram [Criminal Appeal No.1293 of 2006]** wherein in para No.11 it was observed as under:-

“11. Section 243 (2) is clear that a Magistrate holding an inquiry under the Criminal Procedure Code in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper



opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Criminal Procedure Code without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Criminal Procedure Code refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the handwriting expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.”

It is argued that in view of facts of the present case, impugned order dated 22.02.2024 (Annexure P-6) may be set aside and present petitioner may be allowed to examine handwriting expert for the purpose of comparison of his signature on the cheque in dispute.



6. Present petition is opposed by learned counsel for the complainant. It is argued that petitioner has changed his stand regarding signature on the cheque in dispute. In-fact at the time of chargesheet serving notice, petitioner/accused took a stand, relevant part thereof is as under:-

“Q: Do you want to say anything in defence?”

A: Yes, I am innocent and I have been falsely implicated in the present case. No transactions took place between the complainant and me. I have never issued any cheque to the complainant. When there is no legal liability regarding the payment then there is no question regarding of interest payment and complaint misuse the blank signed cheque of mine. Permission may also be granted to cross-examine the complainant witnesses.”

When his statement was recorded under Section 313 Cr.P.C. which is Annexure P-4, he changed his stand altogether by alleging that ‘he has never issued any cheque to the complainant, where he referred that in the year 2018 when Vajinder Singh gave statement against him in some other case on the instructions of Bhupinder Singh who was his Commission Agent. He denied his signatures on all documents Ex.C1, Ex.C5 and Ex.C6 and alleged that said signatures are forged and fabricated one.’ It is argued that considering the aforesaid factual position, learned Judicial Magistrate rightly appreciated the matter in controversy and rightly came to the conclusion that there was no requirement to examine handwriting expert and accordingly the application was declined. Therefore, order dated 22.02.2024 passed by learned Judicial Magistrate, Jagraon does not require any interference.



7. I have considered the arguments and have gone through the record. It is matter of record that present petitioner/accused filed application to examine handwriting expert when the case was fixed for defence evidence. No doubt petitioner/accused had got every right to lead evidence in defence to establish his stand taken in that case. It is duty of trial Court to see the relevancy of witness to be examined in a particular case. Petitioner filed application for examining the handwriting expert for the purpose of examining the signatures on the cheque in dispute. It cannot be ignored that when present petitioner was served with notice under Section 138 of NI Act he took specific detailed stand that he had no legal liability regarding payment to the complainant and there was no question regarding interest payment and complainant misused the blank signed cheque of the present petitioner/accused. Notice served upon the present accused along with the stand taken in defence is Annexure P-5. Learned trial Court while passing impugned order also appreciated the suggestions which were put to the complainant when he stepped into the witness box. After conclusion of entire evidence of the complainant when the statement of present petitioner/accused was recorded under Section 313 Cr.P.C, he took another stand that he never issued any cheque to the complainant and denied his signatures on the cheque in dispute along with pronote and receipt Ex.C5 and Ex.C6 and claimed the same to be forged and fabricated document. Stand taken by the present petitioner is self contradictory one. The petitioner/accused admitted his signature on the cheque in dispute. Stand taken in the statement under Section 313 Cr.P.C. appears to be afterthought. Therefore, judgment of *Apex Court in Kalyani's case (supra)* is not applicable to the facts of the present case.



8. Considering the aforesaid factual position, order passed by learned Judicial Magistrate, Jagraon is fully justified and the same does not require any interference. Consequently, finding no merits in the revision, same is accordingly declined.

9. My observations are made for the disposal of present criminal revision and it will have no bearings on the merits of the case.

10. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

24.07.2024

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(AMARJOT BHATTI)
JUDGE

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