

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

285

CRM-M No.18988 of 2024
Date of Decision: 06.05.2024

JAI MAA BHANBHORI TRADING CO. AND ANOTHER
.....Petitioner(s)
Vs
MOHINDER SINGH
....Respondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Raghav Sharma, Advocate
for the petitioners.

Mr. Shiv Kumar Rana, Advocate
for the respondent.

HARKESH MANUJA, J. (Oral)

- [1]. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing/setting aside of impugned order dated 18.03.2024 passed by the Judicial Magistrate Ist Class, Kaithal, whereby an application filed at the instance of the petitioners seeking permission to examine handwriting expert for the purpose of comparison of the writing on the body of cheque with the signatures of petitioner No.2 thereupon was declined.
- [2]. Having been arrayed as an accused in Complaint No.NACT/96/19 under Section 138 of the Negotiable Instruments Act filed at the instance of respondent/complainant, petitioner No.2 was summoned and was facing trial. While defence evidence was going on, petitioners moved an application for seeking permission to lead evidence by examining handwriting expert so as to compare the writing on the body of cheque with his signatures thereupon. The

aforesaid application was opposed at the instance of respondent/complainant. The Trial Court vide order dated 18.03.2024 dismissed the prayer of the petitioners.

[3]. Impugning the aforesaid, learned counsel for the petitioners while placing reliance upon decision dated 13.06.2022 passed in **CRM-M No.45064 of 2019** titled '**Rajesh Rana vs. Parmod Kumar**' submits that once the plea of misuse of cheque was raised by the accused, he should have been afforded opportunity to prove the same through handwriting expert and, thus, the application moved at the instance of the petitioners/accused was required to be allowed.

[4]. On the other hand, the prayer made on behalf of the petitioners has been vehemently opposed at the instance of learned counsel representing the respondent/complainant while submitting that the purpose of filing of application at the instance of petitioners/accused was merely to delay the proceedings before the Trial Court. He also points out that once the signatures over the cheque in question were never disputed by the petitioner No.2, the factum of filling up of cheque with some different hand had no material relevance, hence the impugned order warrants no interference.

[5]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioners.

[6]. In the present case, once a defence has been set up by the petitioners/accused that the cheque in question was misused at the instance of respondent/complainant, the same having been filled up with different hand in the given facts and circumstances, it was essential to get the same compared with the signature of the petitioners through handwriting expert so as to bring the truth on

record. In this regard, the aforesaid view finds supports from the observations made by this Court in **Rajesh Rana's case** (supra). Relevant paragraph no.13 thereof is reproduced hereunder:-

*“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 rebuttal 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 expert 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 being dishonoured. 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 by not allowing the examination of the cheque in question by a handwriting expert.”.

[7]. It may also be pointed out here that the Trial Court did not appreciate the fact that respondent/complainant was duly cross-examined on the plea of misuse of cheque by the petitioners/accused and, thus examination of handwriting expert to the aforesaid context was very much essential to prove and establish the aforesaid plea of misuse. Even otherwise, no serious prejudice is going to be caused to the respondent/complainant as he would always be at liberty to cross-examine the handwriting expert.

[8]. In view of aforesaid discussion, the impugned order dated 18.03.2024 passed by the Judicial Magistrate Ist Class, Kaithal is hereby set aside. Normal consequences to follow.

[9]. Considering the fact that the complaint in the present case pertains to January 2019 and the same is pending before the Trial Court for the last 05 years, in such circumstances, the Trial Court is directed to conclude the proceedings in the complaint, as expeditiously as possible preferably within a period of 04 months from the date of receipt of certified copy of this order.

[10]. All pending application(s), if any, shall stand disposed of.

May 06, 2024 <i>Atik</i>	(HARKESH MANUJA) JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No