



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-29405-2019

Date of Decision: May 24, 2024

CHARANJIT KAUR

.....Petitioner

Versus

KOTAK MAHINDRA BANK

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Harish Sharma, Advocate for the petitioner.
Mr. Paras M. Goyal, Advocate for the respondent.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside the order dated 20.03.2017 passed by the Court of learned Judicial Magistrate, Chandigarh whereby an application moved on behalf of the petitioner-accused seeking permission to examine the handwriting of DW-4 Amandeep Singh on the index form of cheque book of petitioner which formed part of records as Ex.D-1, stands declined.

2. On account of dishonour of cheque No.363771 dated 11.09.2015 drawn on ING Vysya Bank, a complaint came to be filed at the instance of respondents against the petitioner wherein, upon her putting in appearance before the trial Court, she was served with notice of acquisition. Upon conclusion of the evidence by respondent-bank, the petitioner in order to prove her defence that the cheque in question was obtained by respondent-Bank as a security at the time of grant of loan in favour of petitioner and the details of the cheque number with

date were filled in the index form of cheque book of petitioner by the then Field Officer namely Amandeep Singh Kang, an application came to be moved for drawing specimen handwriting of Amandeep Singh Kang, the then Field Officer for comparison with the handwriting on the index form of cheque book of the petitioner which forms part of records as Ex.D-1. The said application came to be opposed at the instance of respondents and the same was declined by trial Court vide order dated 20.03.2017.

3. Aggrieved thereof, the petitioner filed a revision petition which met the same fate and was dismissed vide order dated 31.05.2019 passed by Addl. District Judge, Chandigarh.

4. Impugning the aforesaid order passed by the Courts below, learned counsel for the petitioner submits that in the wake of defence set up by the petitioner that details of the cheque numbers in the index form of the cheque book of the petitioner were filled up by Amandeep Singh Kang, the then Field Officer in his own hand, the grant of prayer was essential so as to establish the said defence. He further submits that an effort was made on behalf of the petitioner by calling Mr. Amandeep Singh as defence witness who, however, denied his handwriting on the index form of cheque book pertaining to the petitioner which was produced on record as Ex.D1 and thus, the examination of his handwriting in comparison with the writing on the index form of the cheque book of the petitioner was very much essential. Learned counsel for the petitioner also places reliance upon decision dated 13.06.2022 passed in **CRM-M No.45064 of 2019** titled

‘Rajesh Rana vs. Parmod Kumar’ in this regard.

5. On the other hand, learned counsel for respondents vehemently opposes the prayer made in the present petition while submitting that the application made on behalf of the petitioner was filed at a belated stage. He submits that once the witness Amandeep Singh Kang who was summoned in defence as DW-4 denied his handwriting over the index form of cheque book of petitioner who was even granted an opportunity to cross-examine the witness, no useful purpose was going to be served by allowing the prayer made on behalf of the petitioner.

6. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the petitioner.

7. In the present case, a specific defence has been set up by the petitioner to the effect that cheque in question was handed over to the Bank at the time of grant of loan and the particulars thereof were written on the index form of cheque book of petitioner and that too in the handwriting of Amandeep Singh Kang, the then Field Officer and an effort was even made on behalf of the petitioner to establish such defence by calling upon Mr. Amandeep Singh Kang as DW-4, however, he having denied his handwriting on Ex.D-1 it was essential for the Court to have afforded an opportunity to the petitioner to establish the said defence by getting the handwriting of Amandeep Singh Kang on the index form of cheque book of petitioner (Ex. D-1) compared with his specimen handwriting in order to afford opportunity of fair trial. The aforesaid view even finds support from **Rajesh Rana's case (supra)**.

Relevant Para 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.”.

8. In view of the discussions made hereinabove, the impugned order dated 20.03.2017 passed by learned Judicial Magistrate, Chandigarh is set aside and the petitioner is granted opportunity to get the examination of handwriting of DW-4 namely Amandeep Singh compared with handwriting on index of the cheque book pertaining to the petitioner.

9. Considering the fact that the cheque in question relates to the year 2015, the trial Court is requested to expedite the proceedings in the main complaint and conclude the same within a period of 6 months from today.

24.05.2024

Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>