



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

CRM-M-43708-2023 (O&M)
Decided on:-15.05.2024

M/s Jujhar & Narinder Electronics and anotherPetitioners..

VS.

Sikander SinghRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Nitin Sachdeva, Advocate
for the petitioner(s).

None 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 setting aside of order dated 01.05.2023 passed by the Court of Judicial Magistrate Ist Class, Ludhiana, whereby, an application filed at the instance of petitioner-accused, seeking permission to examine hand-writing expert so as to verify the genuineness of the amount (in number) filled on the cheque in question, stands declined.

2. In the present case being arrayed as an accused, petitioner came to be summoned by the trial Court. After conclusion of the evidence of the complainant, in defence, petitioner-accused moved an application for seeking permission to examine hand-writing expert in the aforesaid context, the said application was opposed at the instance of respondent-complainant and the prayer was rejected by the trial Court vide order dated 01.05.2023.

3. Impugning the aforesaid order, learned counsel for the petitioner(s) submits that since beginning the plea raised by the petitioner(s)-accused was that the cheque in question was handed over to one of the employee of the firm namely, Vipin Kumar and cheque was for a sum of Rs.5000/-, however, the said employee misused the cheque in question and added numerical 10 on the cheque before the figure of Rs.5000/-, thereby, making it Rs.1,05,000/- which was even visible from the naked eye and thus, the prayer made in the application was required to be allowed.

4. Despite service, no one has chosen to appear on behalf of the respondent.

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

6. The plea that there is interpolation made in the cheque while adding 10 before the figure of Rs.5000/-(in number) over the cheque in question was specifically and categorically put to respondent-complainant while he appeared as CW-1 during his cross-examination. Relevant portion from the cross-examination of the complainant (CW-1) is extracted hereunder:-

“ I have brought the original cheque today in the court. I have seen the cheque today since the cheque was not filled in my presence so I cannot say that ink and pen used for 10 before 500 is with different pen and the writing of 500 is with different pen. It is correct and I have employees for the purpose of collection of the payments from the person to whom we used to sell goods.....”

In view of the aforesaid, once this specific plea was put to the complainant in his cross-examination and he was found shaky in response

thereof, the prayer made in the application at the instance of petitioner was required to be allowed for the purpose of affording him adequate and sufficient opportunity to put forth his case and establish the plea in defence for the purpose of fair trial. My aforesaid view finds strength from the observations made by this Court in **“*Krishna Devi Shukla vs. K.S. Oil Limited*”, 2022 CriLJ4230**. Relevant para 12 of the aforesaid judgment 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 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.”

7. In view of the discussion made herein above, the present petition is allowed and the impugned order dated 01.05.2023 passed by the Judicial Magistrate Ist Class, Ludhiana is hereby set aside and the prayer made on behalf of the petitioner for the purpose of examination of hand-writing expert so as to verify the genuineness of the amount (in number) filled on the cheque in question is allowed so as to afford adequate opportunity to the petitioner to establish his defence.

9. Considering the fact that the complaint in the present case is pending consideration before the trial Court for the past 08 years, the trial Court is requested to expedite the proceedings and conclude the same preferably within a period of 04 months from today.

15.05.2024
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(HARKESH MANUJA)
JUDGE

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