



posted for complainant's evidence on 18.04.2019 which culminated on 21.09.2023. Thereafter, the proceedings were fixed for recording the evidence of the petitioner-accused. On the second date, the petitioner moved an application for issuance of direction to send the cheque in question to Forensic Lab CBI, Delhi, so as to ascertain the age of the Ink used thereupon as the advance facilities were available there only.

3. The aforesaid application was contested and opposed at the instance of respondent complainant by filing its reply thereto. The trial Court vide order dated 14.11.2023 dismissed the application filed at the instance of the petitioner primarily for the reason that the petitioner who was to adduce cogent evidence in his favour was using dilly-dally tactics having moved the aforesaid application only to delay the proceeding in the present case. Present petition has been filed impugning the order dated 14.11.2023.

4. Learned counsel for the petitioner submits that the defence which is being sought to be agitated by the petitioner is that the parties were in fiduciary relationship of an agriculturist and lender commission agent and the bank account of which the cheque in question is being misused was got opened by the petitioner with the assistance of respondent and during that time the cheque in question was retained by the respondent on 12.11.2010. As per learned counsel for the petitioner, the cheque in question was later misused by the respondent and thus in order to establish his defence, the sending of same to the Forensic Lab, so as to ascertain the age of Ink thereupon was essential.

5. On the other hand prayer made has been vehemently opposed

at the instance of learned counsel for the representing respondent while relying upon the judgment of Supreme Court in case of “***Oriental Bank of Commerce Vs. Prabodh Kumar Tewari passed on 16.08.2022 in Criminal Appeal No 1260 of 2022 (arising out of SLP (Crl) No 9836 of 2019)***”. It is contended that once the signatures were admitted by the petitioner-accused, there was no purpose of sending the cheque to the handwriting expert as the same would not make any difference even if the details therein were filled up by some other person as compared to the person having signed the same as the drawer. The relevant paragraphs No. 17 to 19 as referred by the learned counsel for the respondent are reproduced as under:-

*“17. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.*

*18. Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability.*

*19. In the circumstances, the appeal is allowed and the impugned order of the Single Judge of the Delhi High Court dated 24 July 2019 is set aside. The report which has been received in pursuance of the impugned order dated 24 July 2019 shall not be taken into consideration during the course of trial.”*

6. 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 petitioner.

7. As per the complaint it is the case of complainant that the cheque in question was handed over in 2018 only so as to clear the past loan. Similar stand has also been taken during the testimony of one Naresh Kumar-manager who appeared as PW-4 during trial. On the other hand, it is specifically the defence of the petitioner that cheque in question was handed over by the petitioner to the person concerned somewhere in the year 2010 while the bank account of the petitioner was being opened. In the wake of the aforesaid specific defence, the sending of cheque in question for verification of age of its Ink becomes essential for grant of an opportunity to the petitioner to establish the same. There has been no delay at all on the part of the petitioner while approaching the trial Court, seeking permission to send cheque to the FSL as the evidence of respondent-complainant came to be concluded on 21.09.2023, whereas the application in hand was moved immediately thereafter on 12.10.2023. The trial Court rather than providing assisting hand to the petitioner-accused, enabling him to put forth his defence, curtailed that opportunity merely by mentioning it to be dilly-dally tactics.

8. Moreover, the judgment as relied upon by the respondent cannot come to its rescue in the present facts. Case of the petitioner is even covered by the exception carved out in **Prabodh Kumar Tewari's** (Supra) which has been relied upon by the counsel appearing for respondent, wherein, along with the findings as recorded above, it has also been observed by the Hon'ble Apex Court that presumption under Section 139 of

NI Act is rebuttable by adducing evidence that the cheque was not in discharge of a debt or liability. Relevant paras from this judgment are reproduced below:

*“4. The respondent admits that he signed and handed over a cheque to the appellant. According to the respondent a signed black cheque was handed over by him. The question which arises in the appeal is whether the High Court was correct in permitting the respondent to engage a hand-writing expert to determine whether the details that were filled in the cheque were in the hand of the respondent. For the reasons set out below, we have allowed this appeal against the order of the High Court for the reason that Section 139 of the NI Act raises a presumption that a drawer handing over a cheque signed by hi,m is liable **unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability** The evidence of a hand-writing expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing.*

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*18. Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability.”*

*Note: emphasis supplied*

9. In the facts and circumstances of the present case when it is the specific defence set up by the petitioner that cheque in question has been lying with the respondent since 2010 when his bank account was got opened by the respondent and by way of present application he intends to bring forward the fact that ink used for signatures by the drawer belongs to year 2010 and is quite old and different as compared to other entries in the cheque in question as they were made by different person having used pen with different Ink in the present case.

10. On the contrary, the case of the petitioner is supported by the judgment of Hon'ble Kerala High Court, as relied upon by the learned counsel representing the petitioner in case ***“Manoj Kumar Vs. State of Kerala and Others in Criminal Revision No. 703 of 2019 decided on 09.06.2023*** and paras No. 7 and 8 of the same being relevant reads as under:-

*“7. Having come to the above conclusion, it has to be considered whether the findings in Prabodh Kumar Tewari (supra) has the effect of completely taking away the accused 's right to seek expert opinion, even in cases where the complainant asserts that the cheque was filled up and signed by the accused in his presence. In this regard, it is pertinent to note that in Prabodh Kumar Tewari (supra), the cheque was issued for and on behalf of a Private Limited Company and the accused had sought expert opinion for proving that the cheque was not handed over for the purpose stated in the complaint. It was in the above factual background that the Apex Court hold the opinion of the handwriting expert on whether the accused had filled the details in the cheque to be*

*immaterial in determining the purpose for which the cheque was issued. Pertinently, the Apex Court also held that a drawer, who signs the cheque and hands it over to the payee, is presumed to be liable unless he adduces evidence to rebut the presumption.*

*8. As held in Nagappa T v. Y.R.Muralidhar [(2008) 5 SCC 633], even in a case where a presumption can be raised under Section 118(a) or 139 of the Act, opportunity must be granted to the accused to adduce evidence in rebuttal. By dismissing the petition under Section 243, the court below has denied that opportunity. The finding of the trial court that the opinion of the expert is only an opinion and the court is empowered to make a comparison on its own, as provided under Section 73 of the Evidence Act, does not justify denial of opportunity to rebut the presumption under Section 139 of the N.I. Act.”*

11. In view of the above, finding merit in the present revision petition, the impugned order dated 14.11.2023 passed by the trial Court is hereby set aside and the prayer made by the petitioner in the application seeking sending the cheque in question to FSL for the purpose of ascertaining the age of Ink of particulars given on cheque is allowed.

12. Pending application if any, stand disposed of.

**( HARKESH MANUJA )**  
**JUDGE**

10.01.2024  
monika

Whether speaking/reasoned ? Yes/No  
Whether Reportable ? Yes/No