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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 6624/2022 & CRL.M.A. 25807/2022

VIR CHAND YADAV

.....Petitioner

Through: Mr. Hem C. Vashisht,
Advocate with petitioner
in person.

versus

SUNIL KUMAR

.....Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

23.12.2024

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1. The respondent appears in person and states that he does not want to argue.
2. The petitioner challenges the order dated 07.11.2022, whereby the application filed by the petitioner/complainant under Section 311 of the Code of Criminal Procedure, 1973 ('CrPC') for examination of handwriting expert, was dismissed.
3. A complaint case no. 620877/2016 was filed by the petitioner pursuant to the dishonour of the cheque issued by the respondent. It appears that during the course of proceedings, on the respondent denying his signatures on the subject cheque, the learned Trial Court permitted the petitioner to file a report of handwriting expert.
4. The order dated 29.07.2022, indicates that the report of handwriting expert was taken on record and the copy was also supplied to the respondent/accused. The matter was thereafter put up for 07.10.2022 for examination of handwriting expert. The matter was thereafter listed on 27.10.2022 for the complainant CRL.M.C. 6624/2022

Page 1 of 3



evidence, however, since no complainant witness was present, the evidence was closed and the matter was adjourned to 07.11.2022.

5. The petitioner thereafter immediately filed an application under Section 311 of the CrPC for summoning the handwriting expert, but the said application was dismissed by the learned Trial Court by the impugned order, relying upon the judgment passed by the Hon'ble Apex Court in the case of ***Oriental Bank of Commerce vs. Prabodh Kumar Tewari*** : 2022 INSC 832.

6. The Hon'ble Apex Court in ***Oriental Bank of Commerce vs. Prabodh Kumar Tewari*** (*supra*) had set aside the judgment dated 24.07.2019 passed by the Single Bench of this Court, whereby the accused was allowed to engage a handwriting expert to seek an opinion about the accused's writings on the subject cheque.

7. The Hon'ble Apex Court noted that the accused has admitted his signature as well as the fact that he has handed over the cheques to the complainant. It was held that the drawer who signs the cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or discharge of a liability.

8. The Hon'ble Apex Court further held that once the signatures on the cheque were admitted, the details on the cheques being filled by the drawer or not would be immaterial and the presumption cannot be rebutted merely by the report of handwriting expert.

9. The fact that the cheque was not filled by the drawer, is not relevant to the defence that the cheque was not issued towards payment of debt or in discharge of a liability.



10. In the opinion of this Court the judgment passed by the Hon'ble Apex Court in ***Oriental Bank of Commerce vs. Prabodh Kumar Tewari (supra)***, is not applicable to the facts of the present case.

11. In the present case, it is the complainant who wants to examine the handwriting expert on the respondent denying the signature on the subject cheques. Moreover, the learned Trial Court has already taken on record the report of handwriting expert and by order dated 29.07.2022, had adjourned the matter to 07.10.2022 for examination of the said handwriting expert. Had the defence evidence not closed on 27.10.2022 on account of the witness not being present, the handwriting expert would have been examined. Its only when the application under Section 311 of the CrPC was filed after the closer of evidence, that the impugned order came to be passed relying upon the judgment passed by the Hon'ble Apex Court.

12. As noted above, the said judgment is not applicable to the facts of the present case.

13. In view of the above, the present petition is allowed and the impugned order dated 07.11.2022 is set aside. The matter is directed to be listed before the learned Trial Court on 21.01.2025 for fixing a date for examination of the handwriting expert and further proceedings.

14. The petition is allowed in the aforesaid terms.

15. Copy of the order be sent to the Principal District & Sessions Judge, East District, Saket, New Delhi for compliance.

AMIT MAHAJAN, J

DECEMBER 23, 2024

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CRL.M.C. 6624/2022

Page 3 of 3