

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

**CRM-M-3175-2025
DECIDED ON: 21.01.2025**

SUNIL KUMAR

.....PETITIONER

VERSUS

MAHAVIR SINGH DHALIWAL

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nafeesh Ahmed, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this court has been invoked under section 528 BNSS, 2023 for quashing of the impugned order dated 09.10.2024 (Annexure P-3) vide which the application filed by the petitioner to examine the fingerprint and handwriting expert has been dismissed.

2. The brief facts of the case unfolds that the present petitioner availed friendly loan from the respondent in the year 2013, which was duly paid/cleared by the petitioner upto 2018 with the excessive amount of the loan amount. Further, at the time of availing loan amount a signed blank cheque was obtained by the respondent as security cheque, even after repaying the entire loan amount the aforesaid blank cheque was never returned to the petitioner. Apart from this, no other loan was availed by the

petitioner from the respondent therefore, after receiving full and final payment of the said loan, the respondent has misused the security cheque.

3. Counsel for the petitioner contends that the petitioner had handed over a blank signed cheque to the respondent, which was misused by him and in order to establish the same, the petitioner filed an application in the trial court to get examined the handwriting by handwriting and fingerprint expert which has been dismissed arbitrarily in contravention to section 243 Cr.P.C vide order dated 09.10.2024 (Annexure P-3). He further contends that the said application has been dismissed only on the ground that since the accused had admitted that he had signed the cheque, the deposition of the expert was not required to compare the writing on the body of the cheque.

4. Heard, learned counsel for the Petitioner.

5. The instant case pertains to the fact that the cheque in question was signed by the petitioner but the other particulars were not filled by him and for getting proved the same, he had filed an application in the trial court to appoint a handwriting and fingerprint expert to unveil the truth but the application was dismissed vide order dated 09.10.2024.

6. Before delving into the merits of the case, it is apposite to mention section 243 Cr.P.C. which is reproduced herein below:-

The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for

compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing; Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

The Magistrate may, before summoning any witness on an application under Sub-Section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

7. A perusal of the above mentioned section reveals that 243 Cr.P.C, comes into play after examination of accused under section 313 Cr.P.C. It deals with rights available to accused when the accused is called upon to enter upon his defence and produce his evidence. In the instant case, the perusal of record in hand reveals that the opportunity of defence was duly granted to the accused wherein he had admitted his signatures on the blank cheque and the plea of examining the contents of the cheque from handwirting expert should have been raised then and there only therefore the question of violating section 243 Cr.P.C does not arise in the instant case. Further, once the petitioner-accused has given a blank signed cheque to the

respondent-complainant that implies that the drawer of the cheque has given full authority to the drawee to fill the details in the cheque.

8. Moreso, even if the argument raised by the petitioner-accused that only a blank signed cheque was given to the respondent-complainant is accepted, yet the statutory presumption raised under section 139 of Negotiable Instruments Act 1881, cannot be obliterated. Section 139 of Negotiable Instruments Act, 1881 is reproduced herein below:-

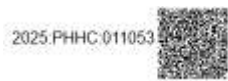
139. Presumption in favour of holder.—

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

The same proposition has been discussed by the Apex court in **“Bir Singh vs Mukesh Kumar (2019) 4 SCC”** wherein it has been held that:-

“40. even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under section 139 of the Negotiable Instrument Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt”

9. In the light of the stated facts and the discussion made herein above, the court is of the opinion that once a signed blank cheque is voluntarily handed over by a person in discharge of some legal liability, it carries with it implied authority to the payee to fill the details as per existing legal liability. Also, the plea raised by the petitioner-accused has been filed



only to prolong the litigation and fill the lacuna in pleading his defence at the trial court.

10. Hence, the present petition stands dismissed being devoid of any merits with no order as to costs.

21.01.2025
Anuradha

(SANDEEP MOUDGIL)
JUDGE

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