



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

**CRM-M-6038-2017(O&M)**

**Reserved on: 06.03.2025**

**Pronounced on: 24.03.2025**

Aum Oil and another

...Petitioners

Versus

Sanjeev Kumar

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Bhag Singh, Advocate  
for the petitioners.

Mr. Manoj Kumar Taya, Advocate  
for the respondent.

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**Harpreet Singh Brar, J.**

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of order dated 06.02.2017 (Annexure P-10) passed by learned Judicial Magistrate Ist Class, Karnal whereby the application filed by the petitioner, seeking permission to examine the handwriting and fingerprint expert and allow him to take photographs of the relevant writing/ signatures for comparison, was dismissed, in the case stemming from criminal complaint dated 24.07.2015 registered under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

2. Briefly, the facts of the case, as alleged, are that petitioner No.2 is operating a petrol pump in the name of Aum Oil (petitioner No.1) on Sirsal



Road, Habri, Kaithal, since July, 2009. Since the parties had a friendly relation, petitioner No.2 and her husband borrowed Rs. 10,00,000/- from the respondent-complainant to facilitate smooth functioning of the business. In order to discharge their legal liability, petitioner No.2 issued a cheque bearing No.365030 dated 19.05.2015 for Rs. 10,00,000/- in favour of the respondent. However, on presentation for encashment, the same was dishonoured vide memo dated 19.05.2015, with remarks- 'exceed arrangement.' Consequently, a legal notice dated 10.06.2015 was served on petitioner No.2. Since she failed to make the requisite payment within the stipulated time, complaint(supra) was instituted.

3. Learned counsel for the petitioners *inter alia* contends that the affairs of the said petrol pump were being managed by one Gulab Singh. On 30.09.2014, when petitioner No.2 and her husband approached Gulab Singh to obtain the accounts, it was discovered that he had misappropriated funds. Gulab Singh neither handed over the complete record of accounts nor returned the blank cheques signed by petitioner No.2. Consequently, FIR No.361 dated 12.12.2015 was registered against Gulab Singh and two other employees, under Sections 406, 420, 506, 120-B IPC at Police Station Pundri. Subsequently, Gulab Singh fraudulently issued the said blank cheques to his relatives, including cheque (*Supra*). As such, an application was moved before the learned trial Court, seeking permission for comparing handwriting/signatures of Gulab Singh, Anil Kumar and Subhash Chand in relation to the disputed cheque. Moreover, the petitioners have already been acquitted in the complaints filed by Satbir Singh, Hari Om Traders through its



proprietor Gulab Singh and Satish Singh respectively (Annexure P-12 to P-14). The learned trial Court has erred in dismissing the said application as comparison of handwriting/signatures is vital to just adjudication of the case.

4. *Per contra*, learned counsel for the respondent submits that the respondent has no nexus with the persons whose handwriting was sought for comparison. As far as FIR No.361 (*supra*) is concerned, the same was found to be false and a cancellation report was filed in this regard on 14.05.2016. In fact, the petitioner has concealed the fact that the FIR No.361 (*supra*) was cancelled 07 months prior to filing of the present petition. The order dated 23.02.2017 whereby notice of motion was issued was obtained by falsely implying that the FIR No.361 (*supra*) is pending. Finally, the complaint filed by the petitioner before the State Crime Branch was also ordered to be cancelled as it was found no such incidence had occurred.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the respondent happens to be the relative of Gulab Singh, who was entrusted with running everyday operations of petitioner No.1-petrol pump, owned by petitioner No.2. It is the case of the petitioners that Gulab Singh has misused the signed blank cheques and distributed them to his relatives, in order to avenge registration of FIR (*supra*) by petitioner No.2, against him.

6. Admittedly, the disputed cheque has been signed by petitioner No.2, however, it is her claim that the details in the cheque have been filled in by Gulab Singh. In fact, while acquitting the petitioners in similar cases filed by other acquaintances of Gulab Singh, the respective learned Courts below



have categorically observed that the disputed cheques therein were misused by Gulab Singh. Moreover, the learned trial Court has rejected the application filed by the petitioners merely on the ground that the signature on the disputed cheque stands admitted by petitioner No.2. However, the question pertains to the genuineness of the remaining contents of the cheque and not the signatures on it.

7. In this context, this Court has no hesitation in holding that denial of such an opportunity would prejudice the petitioners and hamper their ability to present best available evidence, which is in direct violation of the right to free and fair trial enshrined under Article 21 of the Constitution of India as well as the principles of natural justice. While it is true that the results of the proposed analysis in itself might have some probative value but it is the circumstances that would cause the Court to decide if the same can shake the credibility of the prosecution case. As such, no prejudice will be caused to the respondent if the handwriting on the cheque (supra) is analysed and compared with that of Gulab Singh's handwriting. Reliance in this regard can be placed on the judgment rendered by a Co-ordinate bench of this Court in ***Rajesh Rana vs. Parmod Kumar 2022(4) R.C.R.(Criminal) 381***, wherein, speaking through Justice Jasjit Singh Bedi, the following was held:

*“13. 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.**” (emphasis added)*

8. In view of the discussion above, the present petition is allowed and impugned order dated 06.02.2017 (Annexure P-10) passed by learned Judicial Magistrate Ist Class, Karnal is hereby set aside.

9. The learned trial Court is directed to give one effective opportunity to the petitioners to get the handwriting examined through an expert.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

Reserved on : 06.03.2025  
Pronounced on : 24.03.2025  
Manisha

(HARPREET SINGH BRAR)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |