

2025:PHHC:075907



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

**CRM-M-25661-2025
DECIDED ON: 12.05.2025**

RAKESH NAYAR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Kanwaljeet Singh, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 528 of BNSS has been invoked seeking quashing of Impugned Order dated 05.04.2025 Annexure P-22, passed by Ld. JMIC, Ludhiana vide which an application dated 25.03.2025 (Annexure P-20) filed by the petitioner for handwriting expert was dismissed in case bearing no. CHI-1244-2019 titled "*State of Punjab v/s Rakesh Nayar*" in FIR No. 2 dated 01.01.2019 u/s 420 IPC, PS Focal Point, District Police Commissionerate Ludhiana (Annexure P-6), the same being wrong, illegal and utter abuse of process of law and Further prayed that further proceedings pending before the Court below may kindly be stayed, during the pendency of the present petition.

2. Briefly, the facts leading to the filing of the present petition are that FIR No. 2 dated 01.01.2019 was registered against the petitioner under Section 420 IPC on

the basis of a complaint made by respondent No. 2, alleging that the petitioner had taken money and was refusing to return it. During inquiry by SDM, Ludhiana, the statement of a witness (Gaurav Khanna) was recorded, which narrated an altogether different story. The petitioner alleged that the complainant had subsequently forged and tampered with the complaint by adding the word “Interest” and making interpolations to create a cause of action. In support of this, the petitioner sought to summon a handwriting expert to compare the handwriting/signatures of the complainant with the documents in question.

3. The petitioner had earlier moved an application under Section 243 Cr.P.C., (now Section 266 of BNSS, 2023) which was allowed by the learned trial Court, permitting him to lead defence evidence. The complainant was also directed to give specimen signatures, which he did, albeit inadequately as per the expert. On the petitioner’s request, further directions were issued for fresh specimen signatures to be provided, and eventually, the petitioner moved an application to summon the handwriting expert, Mr. Varun Gagneja, which was dismissed by the impugned order.

4. Learned counsel for the petitioner has submitted that there is an inadvertent error in the order dated 05.03.2025, wherein it has been recorded that expert witness Mr. Faizal Hooda be summoned. It is contended that Mr. Faizal Hooda has already submitted his expert report in the matter titled ***"M/s Osho Tools vs. Woolways Exports"***, pertaining to Cheque No. 835645 for an amount of ₹5,00,000/-. In his report, Mr. Faizal Hooda has opined that the name “Pankaj Sharma” appearing on the said cheque was written by the complainant himself. Furthermore, it is submitted that Mr. Faizal Hooda has already been cross-examined

by the complainant, and therefore, no further summoning of the said expert is warranted.

5. In view of the above, it is prayed that Mr. Varun Gagneja, Handwriting Expert, may be permitted to obtain the specimen handwriting of the complainant, Mr. Pankaj Sharma, specifically his name written in capital letters, in open court and in the presence of the expert. It is further prayed that Mr. Varun Gagneja be allowed to compare the disputed name "Pankaj Sharma" written in capital letters, as appearing on the photocopy of the cheque in question for ₹10,00,000/-, with (i) the admitted handwriting of the complainant in capital letters as reflected in the original complaint, and (ii) the specimen handwriting obtained in court.

6. It is also submitted that for the purpose of a thorough and effective examination and comparison, Mr. Varun Gagneja be granted permission to access and obtain photocopies or relevant documents from the judicial file, as may be necessary for the said purpose.

7. After giving thoughtful consideration of the submissions made by learned counsel for the petitioner, this Court is of the considered view that the reasoning given in the impugned order is legally unsustainable. While it is true that under Section 73 of the Indian Evidence Act (now Section 72 of Bhartiya Sakshya Adhiniyam, 2023), handwriting comparison is ideally conducted using original documents, it cannot be held as an absolute bar in every circumstance. The Hon'ble Supreme Court in *Ram Babu Misra v. State of Uttar Pradesh*, (1980) 2 SCC 343, has held that even a court can itself compare handwriting/signature when necessary. Further, in *S. Gopal Reddy v. State of A.P.*, (1996) 4 SCC 596, the Apex Court recognized the relevance of expert opinion in such matters and emphasized that accused must be given full opportunity to prove his defence.

8. In the present case, the handwriting expert is sought to be examined as a defence witness pursuant to an earlier order passed under Section 243 Cr.P.C. (now Section 266 of BNSS, 2023) which specifically permits the accused to summon witnesses in his defence. The expert is sought not merely to opine on a photocopy, but to assist in determining the authenticity of a document which forms the crux of the allegations. Whether such evidence ultimately holds weight is a matter of appreciation at the stage of final judgment, but the denial of opportunity to lead such evidence, particularly when the accused is facing serious penal consequences, is unjustified and contrary to principles of fair trial.

9. Accordingly, the present petition is allowed.

10. The impugned order dated 05.04.2025, passed by the Learned Judicial Magistrate First Class, Ludhiana (Annexure P-22), is hereby set aside. The petitioner is granted liberty to summon and examine Handwriting Expert Mr. Varun Gagneja, or any other expert deemed relevant, in support of his defence, within the next two effective dates from the date of receipt of the certified copy of this order.

11. The petitioner shall also file an undertaking before the Trial Court to the effect that he shall conclude his evidence within the time period as stipulated by this Court.

12. The learned trial Court shall proceed in accordance with law, without being influenced by the observations made in the impugned order.

(SANDEEP MOUDGIL)
JUDGE

12.05.2025
Sham

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