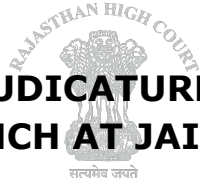




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No.1175/2015

Mahesh Tiwari son of Late Shri Devilal, resident of Nahar Road, Shukla Colony, Gangapur City, District Sawai Madhopur (Rajasthan).

-----Petitioner

Versus

1. The State of Rajasthan through P.P.
2. Kailash son of Chiranji Lal, resident of Village Naroli Dang, Police Station and Tehsil, Sapotra, District Karauli (Rajasthan).

-----Respondent

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For Petitioner(s)	:	Mr. Rahul Sharma for Mr. Rajneesh Gupta
For Respondent(s)	:	Mr. Jitender Singh Rathore, PP Mr. Laxman Meena

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**JUSTICE ANOOP KUMAR DHAND**

**Order**

**13/04/2026**

Reportable

1. By way of filing the instant criminal misc. petition, a challenge has been made to the impugned order dated 02.03.2015, passed by Judicial Magistrate (First Class), Gangapur City, Sawai Madhopur in Criminal Case No.335/2012, by which the application submitted by the accused-petitioner under Section 45 of the Indian Evidence Act, 1872 (for short "the Act of 1872") for analysis of his signatures on the cheque in question by a handwriting expert from the Forensic Science Laboratory (for short "the FSL") has been rejected.

2. Learned counsel for the petitioner submits that the accused-petitioner has not issued any cheque to the complainant-





respondent and therefore he could not have signed the same. Learned counsel submits that this has been his precise case right from the beginning when he received a notice from the complainant-respondent after dishonour of the cheque in question and he has taken the same defence at every stage of the trial. Learned counsel submits that when the case reached the stage of recording the evidence of the accused-petitioner, he submitted the above-mentioned application under Section 45 of the Act of 1872, with the prayer to allow FSL examination of the signatures on the cheque in question by a handwriting expert. The aforementioned prayer of the accused-petitioner has been declined by the court below, hence, he has approached this Court by way of filing the instant criminal misc. petition.

3. In support of his contentions, learned counsel for the petitioner has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Kalyani Baskar (Mrs.) Vs. M.S. Sampooram (Mrs.)** reported in **(2007) 2 SCC 258**.

4. *Per contra*, learned counsel appearing on behalf of the complainant-respondent opposed the arguments raised by learned counsel for the accused-petitioner and submitted that, the aforementioned application under Section 45 of the Act of 1872 has been submitted by the petitioner at the fag end of the trial in order to delay disposal of the same. Learned counsel submits that the court below has not committed any error in passing the impugned order, hence, interference of this Court is not warranted and the instant petition is liable to be rejected.

5. Heard and considered the submissions made at the Bar and perused the material available on the record.





6. Perusal of the record indicates that the petitioner is facing trial for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act of 1881") in the proceedings arising out of the complaint filed by the complainant-respondent against the accused-petitioner before the court of Judicial Magistrate (First Class), Gangapur City, Sawai Madhopur. The documents annexed with the instant petition indicate that the cheque bearing No.106880 dated 31.03.2011, was presented by the complainant-respondent before his banker and the same was dishonoured by the bank with the remark "funds insufficient". After dishonour of the cheque, the complainant-respondent served a legal notice upon the accused-petitioner for refund of the cheque amount and since receipt of the aforesaid notice, the accused-petitioner has disputed the signatures over the cheque in question with the averment in his reply that he never issued such a cheque in favour of the complainant-respondent.

7. It appears that trial has commenced and after recording the statement of the complainant-respondent, when the trial reached the stage of recording the evidence of the accused-petitioner, he submitted an application under Section 45 of the Act of 1872 for getting analysis of the signatures on the cheque in question by a handwriting expert of the FSL. The aforesaid prayer of the accused-petitioner was declined by the court below on the technical count that he may examine the bank officer in order to prove his defence in this regard and that the application has been submitted by the accused-petitioner at the fag end of the trial, i.e., at the stage of recording his evidence.





8. Under such circumstances, the accused-petitioner has approached this Court with the prayer for sending the cheque in question to the FSL for analysis of the signatures on the cheque in question.

9. Fair trial is the fundamental right of an accused as guaranteed under Article 21 of the Constitution of India. Fair trial implies that fair and proper opportunities, in accordance with the law, be granted to an accused in order to prove his innocence.

10. Every person is presumed to be innocent till proven guilty. He has right to defend himself as a part of his human right as well as fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence, is recognized by the legislature in terms of Section 243 (2) of Cr.P.C.

11. This fact has been disputed by the accused-petitioner from day one when he received legal notice from the complainant-respondent that he never ever issued the cheque in question to the complainant-respondent and therefore he could not have signed the same and the same defence has been taken by the accused-petitioner during the entire course of trial. When the trial reached the stage for recording his evidence under Section 313 Cr.P.C., by way of filing an application under Section 45 of the Act of 1872 with the prayer for sending the cheque in question to the FSL for analysis by a handwriting expert.

12. Section 139 of the Act of 1881 creates a presumption in favour of the holder, which reads as under:—

“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, or any debt or other liability.”

13. Thus, while Section 139 of the Act of 1881 creates a presumption in favour of the holder of cheque, it also permits the accused-offender the right to prove 'to the contrary'. Hence, it is not an absolute presumption, but a rebuttable one.

14. The right to fair trial cannot be overemphasized. Needless to say, the right emanates from Article 21 of the Constitution of India which is the heart and soul of the Constitution. The first principle of common law is that every person is presumed to be innocent till proven guilty. But, Section 139 of the Act of 1881 reverses this presumption under the common law. Therefore, the burden of proof shifts to the accused in the case of offence under Section 138 of the Act. Since the presumption is in favour of the holder, it is for the accused to disprove his guilt. In such a scenario, naturally the right to fair trial becomes stronger. Thus, this right deserves to be protected more strongly and emphatically than in ordinary criminal offences under the Penal Code, 1860.

15. The Hon'ble Apex Court in the case of **Kalyani Baskar (Mrs.) (supra)**, has held in Para 12, which reads as under:-

“12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut





the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 CrPC without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) CrPC refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque in question, for the opinion of the handwriting expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable."

16. In view of the circumstances and case laws as discussed hereinabove, the question of fact as to whether the signature in question is original/authentic or not cannot be decided without the opinion of a handwriting expert. Thus, it is important to send the cheque in question to the FSL for its scientific opinion.

17. Considering the proposition of law as laid down by the Hon'ble Apex Court in the case of **Kalyani Baskar (Mrs.) (supra)**, this Court is of the considered opinion that the





application submitted by the accused-petitioner under Section 45 of the Act of 1872 deserves to be accepted. Hence, the impugned order dated 02.03.2015 passed by the court below is liable to be and is hereby quashed and set-aside with directions to the Trial Court to send the cheque in question to the FSL for analysis of the disputed signatures. After taking the specimen signatures of the accused-petitioner in Court, the same along-with the cheque in question be sent to the FSL by writing a D.O. letter to the FSL for sending its report expeditiously, as the matter pertains to the year 2012 and more than 14 years have passed.

18. The Trial Court is directed to make all possible endeavours to conclude the trial expeditiously as early as possible immediately after receipt of the report of the FSL. The Trial Court is further directed not to entertain any unnecessary and unwarranted requests for adjournment, made by either side and make all possible endeavours to decide the complaint expeditiously.

19. Accordingly, the instant criminal misc. petition stands allowed. Stay application as well as all applications (pending, if any) stand disposed of.

(ANOOP KUMAR DHAND),J

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