

**(2016) 01 AHC CK 0066**

**ALLAHABAD HIGH COURT**

**Case No:** Application Nos. 32445 of 2015 and 34876 of 2010

Nisha Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Jan. 7, 2016

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Hon'ble Judges:** Om Prakash-VII, J.

**Bench:** Single Bench

**Advocate:** Pawan Shukla and Udai Chandani, for the Appellant; G.A. and L.M. Singh, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Om Prakash-VII, J.

1. Since the controversy involved in both the matters relates to same cheques in question and since both the aforesaid applications have been heard together, the Court proceeds to decide the same by a common judgment and order.
2. Heard learned counsel for the applicant and learned counsel for the opposite party No. 2 as well as learned A.G.A. for the State on both the applications.
3. The applicant, through the application under Section 482 No. - 32445 of 2015 has invoked the inherent jurisdiction of this Court with a prayer to quash the entire proceedings of the complaint case No. 493 of 2015 (Raina Pandey v. Nisha Sharma) under section 138 of Negotiable Instrument Act, Police Station Nawabganj, District Kanpur Nagar pending in the Court of Metropolitan Magistrate-II, Kanpur Nagar as well as the order dated 8.10.2015 passed in the aforesaid case. Further prayer has been made to stay the entire proceedings of the aforesaid complaint case.

4. In the application under Section 482 No. - 34876 of 2010, applicant had challenged the summoning order dated 27.2.2010 passed by the Metropolitan Magistrate, Room No. 9, Kanpur Nagar in complaint case No. 1522 of 2010 (Smt. Raina Pandey v. Smt. Nisha Sharma) under section 138 of Negotiable Instruments Act. In this matter, since the trial has reached at the stage of argument after conclusion of the evidence of the parties, therefore, no ground is made out to invoke the inherent jurisdiction of this Court under section 482 Cr.P.C. to quash the summoning order at this stage, which was passed in the year 2010.

5. On the application under Section 482 No. - 32445 of 2015, learned counsel for the applicant submitted that the order passed by the court below on 8.10.2015 is against the law. In compliance of the order dated 17.10.2014 passed by this Court in the application u/s. 482 No. -39929 of 2014, the cheque in question was sent to Government Handwriting Expert for obtaining the Expert's opinion in respect of the handwriting/signatures made on the said cheque. Handwriting Expert of Forensic Science Laboratory, Lucknow submitted the report, which was available on record, but the court below ignoring this factual situation passed the order for obtaining a second opinion from another handwriting expert. Since a report of Handwriting Expert was already available on record, therefore, there was no occasion to send the cheques for second opinion from another handwriting expert. It was also argued that this Court has also directed the court concerned to dispose of the matter expeditiously, but this fact was also not taken into consideration. A contempt proceeding is going on against the concerned Presiding Officer before this Court. The evidence have been concluded. The Expert has been examined. Therefore, order passed by the court below for sending the cheques in question for a second opinion from another handwriting expert/private expert is an abuse of process of law. Referring the several orders passed by this Court and the other proceedings pending between the parties, it was also argued that the court concerned has committed illegality in passing the order dated 8.10.2015.

6. Learned counsel for the applicant has placed reliance on the following case laws in support of his contention :

"1. Vimla Devi v. State of Rajasthan, , 2011 (1) NIJ 216

2. N. Chinnasamy v. P.S. Swaminathan, , 2006 (4) CTC 850

3. Irulappan v. Meenakshisundaram, , 1998 (3) CTC 140

4. Amaravathi Chits Investments v. T.M. Vaidyanathan, , 2005 (2) R.C.R. (Criminal) 954

5. M/s. Disha Impex Pvt. Ltd. v. M/s. Srinivasa Minerals and Traders Ltd. & Ors."

7. Learned counsel for the opposite party No. 2 submitted that no opportunity was given earlier to the opposite party to make effective rebuttal to the handwriting expert's opinion. Initially, at one point of time, samples of signatures were sent for verification, but the same handwriting expert asked for fresh samples of signatures.

Thereafter, expert submitted the report only on the basis of few (less) numbers of signature's samples than the samples sent earlier. It was further submitted that the court concerned, while passing the impugned order, has not committed any mistake or error of law. This Court passed the order on 17.10.2014 for sending the signatures for verification along with the cheque in question in compliance of the order passed on the application filed by the present applicant under section 482 Cr.P.C. bearing No. 39929 of 2014. Since the opposite party was not afforded opportunity by the court below to rebut the report of the expert, therefore, impugned order passed by the court below is not illegal.

8. Learned counsel for the opposite party No. 2 in support of his contention has placed reliance on the following case laws :

"1. State (Delhi Admn.) v. Pali Ram, , AIR 1979 Supreme Court 14

2. L.C. Goyal v. Suresh Joshi (Mrs.) and Others, , (1999) 3 Supreme Court Cases 376

3. Tomaso Bruno and Another v. State of U.P., , (2015) 3 Supreme Court Cases (Cri) 54

4. Dayal Singh and Others v. State of Uttaranchal, , (2012) 3 Supreme Court Cases (Cri) 838

5. State of Maharashtra v. Sukhdeo Singh and Anr., , JT 1992 (4) S.C. 73."

9. I have considered the rival submissions advanced by learned counsel for the parties and have gone through the entire record including the law laid down in the aforementioned cases.

10. Before advertng to the facts and arguments of the present matter, I would refer the order passed by this Court on 24.2.2014 in the Application u/s. 482 No. - 5708 of 2014.

"Heard learned counsel for the parties and perused the record.

This is an application filed u/s. 482 Cr.P.C. with the prayer to direct the trial court M.M.-I, to hear the complaint case No. 311 of 2012 under Section 138 N.I. Act, P.S. Nawabganj, District Kanpur Nagar on day today basis and decide it at the earliest preferably within three months.

Learned counsel for the applicant contended that complaint is of the year 2012, and opposite party No. 2 do not cooperate with trial, as such some direction may be issued.

Considering the submission of the learned counsel of the applicant, it is expected that the trial court will conclude the proceeding without unreasonable delay and unnecessary adjournment preferably within six months from the date of production of certified copy of this order.

With these observations, present application filed under section 482 Cr.P.C. is finally disposed off."

11. It appears that cheque in question and the samples of signatures were sent for verification to the expert in compliance of the order dated 17.2.2014 and the handwriting expert submitted report thereafter. It also appears from the record that the expert, who had submitted the report, has been examined before the Court. The matter was at the verge of argument. Application for sending the cheques and the samples of signatures of the drawer for obtaining second opinion from the private expert was moved. The court concerned invited the objection and after hearing the parties allowed the prayer and vide impugned order fixing a date directed the opposite party No. 2/complainant to submit the list of the experts and also the details of expenses to be incurred for this purpose.

12. If the ratio of the law laid down in the aforementioned cases is taken into consideration to decide the issue involved in the present matter, it is clear from the record that no opportunity was given to the opposite party No. 2 to rebut the opinion of the handwriting expert. Application was moved on 3.9.2015. The opposite party No. 2/complainant intends to rebut the expert's opinion by obtaining a second opinion of another handwriting expert. Though, the court dealing with the matter is empowered to verify and check the disputed signatures with the admitted signatures and opinion of the expert is mere opinion, but looking to the factual aspect of the present matter, the order passed by the concerned Magistrate regarding sending of the cheque in question and the signatures for private expert opinion cannot be termed to be illegal. Opposite party No. 2/complainant has a right to get the disputed cheque/signatures examined through her own expert at her own expenses. The order was passed by the court concerned after considering the entire facts and evidence of the case. If a second opinion of any handwriting expert would be available on record, in my opinion it would facilitate the court concerned to reach on a correct conclusion. In no way, delay in moving the application in this matter would create any bar to the court concerned in obtaining the second opinion of the handwriting expert. This Court is also of the view that no prejudice would be caused to the applicant if the second opinion is made available on record. So far as timely disposal of the matter is concerned, six months" time for disposal of the aforesaid complaint was given on 24.2.2014 and thereafter this Court in the aforesaid Application 482 No. - 39929 of 2014 on dated 17.10.2014 directed the court concerned to send the cheque and signatures in question for expert opinion. In this aspect of the matter, I am of the view that on this score, the order under challenge is not illegal. The other factual arguments raised by the learned counsel for the applicant regarding other proceedings going on between the parties is not material to be discussed in this matter because only issue involved in this application was that whether permission in the application moved by the opposite party No. 2/complainant for second opinion from another handwriting expert could be granted or not ? The answer has been given above in affirmative. On this basis,

entire proceedings of the aforesaid complaint case can not be quashed. The prayer made by the applicant in this respect has no substance.

13. In view of the above, no illegality is found in the orders under challenge. Therefore, both the applications, being devoid of merit, are liable to be dismissed and is accordingly dismissed.

14. Interim order if any stands vacated.

15. The court concerned is hereby directed to ascertain the second opinion from another handwriting expert regarding the disputed cheque/signatures within the specified period and to dispose of the matter as early as possible.