

2026.PHHC:082856



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

105

CRR-1631-2023

Date of Decision: 20.05.2026

Rohit Kumar @ Rohit Guleria

...Appellant (s)

Vs.

State of Punjab

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Munish Puri, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the impugned order dated 04.07.2023 passed by the Judge, Special Court, Pathankot, whereby, the application moved by the petitioner-accused for granting permission to examine handwriting expert to compare the signature of accused over non-consent memo, consent memo, recovery memo, arrest-cum-information memo, personal search memo and disclosure statement was dismissed.

2. Learned counsel for the petitioner contends that one FIR No. 104 dated 22.8.2018 under Sections 15, 29 and 61 of the NDPS Act, 1985 (Annexure P-1) was ordered to be registered against the petitioner. During investigation, the *challan* was prepared and was presented against the petitioner also. SI Satish Kumar, author of the FIR, appeared

as PW1 and was cross-examined at length. In his cross-examination, a specific question was put to the witness that in the non-consent memo, it has nowhere been mentioned that the contents were read over to the accused and after admitting the contents, he signed the same. He volunteered that the contents were read over to the accused and he signed in English. Even, a specific suggestion was put to Satish Kumar SI that it is incorrect to suggest that the consent or non-consent memo does not bear the signature of Rohit Kumar accused. Further, the following specific suggestions were put to the witness:-

“It is incorrect to suggest that the recovery memo of car does not bear the signature of Rohit Kumar as well as the information memo does not bear the signature of Rohit Kumar and even, the personal does not bears the signature. The disclosure statement was written at the place of recovery and the alleged place of recovery. It is in my handwriting. It is incorrect to suggest that accused never made any such disclosure statement or the accused never put his signatures over the same”

3. Learned counsel contends that ASI Shiv Kumar CIA Staff, Pathankot, appeared as PW2 and he was also given a specific suggestion that; *“it is incorrect to suggest that the consent memo and the non consent memo does not bear the signatures of accused Rohit Kumar or the said signatures were forged.* Thereafter, DSP Sukhjinder Pal Singh appeared as PW4 and again a specific suggestion was put to him that: *“it is incorrect to suggest that non consent memo was prepared in his presence. I do not remember who has written the recovery memo. I have put my signatures on the recovery memo. It is incorrect to suggest that the memos so got prepared were got signed by the IO in my office. It is*

incorrect to suggest that I have never visited the place of alleged recovery”.

4. Learned counsel for the petitioner vehemently submits that right from the very beginning, the petitioner had taken up a defence that the recovery was planted and the relevant memos prepared by the police at the spot at the time of recovery were false and fabricated. Even, in the statement under Section 313 Cr.P.C., he had denied the entire prosecution case, including recovery from him. Learned counsel further submits that during the course of trial, the petitioner/accused had moved an application (Annexure P-5), for granting permission to examine the handwriting experts to compare the signatures of the petitioner over non-consent memo, consent memo, recovery memo, arrest-cum-intimation memo, personal search memo, and disclosure statement, (Annexure P-5). Vide the impugned order, the said application has been ordered to be dismissed. He further contends that in fact, the accused always have an indivisible right to fair trial and equal opportunity to prove innocence. Moreover, the law is well settled that the right of the accused to adduce defence evidence is not a mere formality, but an essential part of criminal trial, where even one opportunity must be given to the petitioner/accused to adduce his defence. He further contends that the statement under Section 313 Cr.P.C was recorded on 27.02.2023, and after only 11 days, the instant application was filed on 10th March 2023 without any further delay.

5. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the petitioner has filed the application (Annexure P-5)

only with a view to delay the trial. Moreover, all the witnesses had categorically deposed that the petitioner had signed the memos himself and no such prayer was made earlier by him. Thus, the petition deserves to be dismissed by this court.

6. I have heard learned counsel for the parties and perused the record very carefully.

7. The Hon'ble Supreme Court has held in the matter of *Kalyani Baskar Vs. M.S. Sampooram*, 2007(1) RCR (Criminal) 311, as under:-

"11. Section 243 (2) is clear that a Magistrate holding an inquiry under the Criminal Procedure Code 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 hand-writing 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 hand-writing 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 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 Criminal Procedure Code 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) Criminal Procedure Code 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 hand-writing 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.

(Emphasis supplied)

8. Still further, the Hon'ble Supreme Court in ***T. Nagappa v. Y.R.Muralidar, 2008(3) RCR (Criminal) 926***, held as under:-

“3.On or about 1.8.2006, the appellant filed an application under Section 243 of the Code of Criminal Procedure wrongly mentioned as Section 293 of the Code of Criminal Procedure, 1973 for referring the cheque in question for examination by the Director of Forensic Science Laboratory for determining the age of his signature, contending that the respondent had obtained a signed cheque from him in the year 1999 as a security for a hand loan of Rs. 50,000/- which had been paid back, but instead of returning the cheque, the same has been misused by

entering a huge amount, which he did not owe to the appellant."

7. When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it.

An accused has a right to fair trial. He has a right to defend himself as a part of his human as also 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 recognised by the Parliament in terms of subsection (2) of Section 243 of the Code of Criminal Procedure, which reads as under :

"Section 243 - Evidence for defence. - (1) ..

(2) 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."

8. *What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bonafide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant.*

9. *The learned Trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of section 20 of the Negotiable Instruments Act. The very fact that instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bonafide.*

*The issue now almost stands concluded by a decision of this Court in **Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.)**, 2007(1) RCR (Criminal) 311 : 2007(1) RAJ 68 : [(2007)2 SCC 258] (in which one of us, L.S. Panta, J., was a member) wherein it was held :*

"12. Section 243(2) is clear that a Magistrate holding an inquiry under Criminal Procedure Code 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 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."

10. However, it is not necessary to have any expert opinion on the question other than the following :

"Whether the writings appearing in the said cheque on the front page is written on the same day and time when the said cheque was signed as "T. Nagappa" on the front page as well as on the reverse, or in other words, whether the age of the writing on Ex.P2 on the front page is the same as that of the signature "T.Nagappa" appearing on the front as well as on the reverse of the Cheque Ex.P2 ?"

(Emphasis supplied)"

9. Now, advertent to the facts of the present case, the trial Court while disposing of the application (Annexure P-5) observed that in the present case the *challan* was presented on 16.01.2019 and charge was framed on 21.05.2019. Thereafter, the case was listed for

prosecution evidence. Even, the Additional Public Prosecutor for the State had closed the prosecution evidence on 01.02.2023 and, thereafter, the statements of the accused under Section 313 Cr.P.C. were recorded on 27.02.2023. Thereafter, the application (Annexure P-5) to examine handwriting expert has been filed on 10.03.2023. It was further observed that from the presentation of the *challan* till the filing of documents in defence, the petitioner remained mum about examining the handwriting expert to compare his signatures on the aforesaid memos. In fact, the said observation of the trial Court is apparently wrong and has been made by completely overlooking the provisions of Code of Criminal Procedure/BNSS. In the trial Court, an accused would lead his defence only when the case is listed by the trial Court for adducing defence evidence and not at any other earlier stage. Apart from that, this also shows that the prosecution had consumed almost four years from 21.05.2019 to 01.02.2023 in producing their evidence, and when the case is listed for defence evidence, the trial Court seems to be in a hurry to decide the matter. In fact, the accused can never be denied a fair chance to defend himself, and even trial Courts should have granted sufficient time to the accused also to lead his evidence in order to prove his defence before the trial Court. Still further, the statements of the accused under Section 313 Cr.P.C. were recorded by the trial Court on 27.02.2023, and the present application (Annexure P-5) was moved by the petitioner-accused within a period of 11 days, i.e., 10.03.2023, and it can never be said that the petitioner had delayed the trial in any manner. Apart from that, it is also apparent that the prosecution was given full opportunity of hearings by the trial Court, and when the case is listed for

defence evidence, the trial Court wrongly observed that the petitioner was trying to delay the trial before the trial Court. In fact, it was obligatory for the trial Court to give fair opportunity of hearings to the accused also, especially when he had moved the application (Annexure P-5) without any delay on his part. Even otherwise, this Court is of the considered opinion that both the parties should be granted full opportunity to lead their respective evidence, so that the right to free and fair trial under Article 21 of the Constitution may be ensured to both the sides.

10. In view of above discussion, the present petition is allowed and the petitioner-accused is granted the permission to examine handwriting experts to compare his signatures over non-consent memo, consent memo, recovery memo, arrest-cum-information memo, personal search memo and disclosure statement.

11. Pending applications, if any, stand also disposed of, accordingly.

20.05.2026
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No