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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision:18th July, 2025*

+ **CRL.M.C. 4720/2025, CRL.M.A. 20458/2025**

SHUBHWATI

W/o Sh. Satya Pal Goswami
R/o 4/4, Flat D2, Sector 5,
Rajender Nagar, Sahibabad,
Ghaziabad, U.P.

.....Petitioner

Through: Appearance not given.

versus

ALKA RASTOGI

W/o Late Shri Ashok Kumar
R/o House No.941, Top Floor,
HIG Category, Vikas Kunj,
Vikasपुरi, New Delhi-110018.

.....Respondent

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) and 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"*) read with



Article 226 of the Constitution of India has been filed on behalf of the Petitioner for setting aside of the Order dated 19.05.2025 vide which the learned ASJ in Criminal Revision has upheld the Order of the learned JMFC dated 21.09.2024, whereby the Application of the Petitioner for examination of Handwriting by the Expert has been dismissed in a Complaint Case under Section 138 Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI Act"*).

2. *Briefly stated*, the Complainant/Respondent had filed a Complaint under Section 138 NI Act. At the stage of Defence Evidence, the Petitioner/Accused moved an Application under Section 243 Cr.P.C. praying for appointment of Handwriting Expert on the ground that she had never signed the impugned cheque. The Trial Court, however, dismissed the Application *vide* Order dated 21.09.2024 and closed the opportunity of the Accused/Petitioner to adduce evidence.

3. Aggrieved the Revision Petition was filed before the learned ASJ, who also upheld the Order of learned JMFC on 19.05.2025.

4. *Hence, the present Petition has been filed to seek the impugned cheque be examined by an Handwriting Expert.*

5. The ***grounds of challenge*** are that the Complainant had already admitted in her evidence before the learned Trial Court that there was no transaction with the Accused, which means that there is no legally recoverable debt against the Petitioner/Accused.

6. The learned Trial Court has erroneously relied upon the judgment of



Ajitsinh Chehuji Rathod vs. State of Gujarat, (2024) 4 SCC 453, which is in fact is not applicable on the facts of this case. No opportunity had been given to the Petitioner for rebuttal that the signatures on the cheque were not her signatures.

7. Reliance has also been placed on Amarnath & Ors. vs. State of Haryana, AIR 1977 SC 2185, wherein the Apex Court held that “Interlocutory Order” in Section 397 (2) Cr.P.C. has been used in a restricted sense and includes Orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties. Any Order which touches the rights or decides the rights of the parties cannot be termed as interlocutory. The learned ASJ wrongly observed that the Order under Section 243 Cr.P.C. for appointment of Handwriting Expert is purely an interlocutory Order. Infact, no right of accused pertaining to trial has been decided therein as the Revision Petition under Section 397 (2) was held to be not maintainable.

8. The inherent powers of this Court under Section 482 Cr.P.C. though should be sparingly used, but when the Court comes to the conclusion that there is manifest injustice and abuse of process of the Courts, such power must be exercised as observed in the case of State of Maharashtra through CBI vs. Vikram Anatrai Doshi Criminal Appeal No. 2048 of 2014 and Inder Singh Goswami vs. State of Uttaranchal, 2007 (12) SCC 1.

9. The case was at the stage of defence evidence; a fair opportunity of rebuttal has been denied to the Petitioner which was necessary to prove his



defence.

10. It is, therefore, submitted that the impugned Order be set aside and an opportunity be given to the Petitioner to examine the Handwriting Expert in her defence.

11. Submissions heard and record perused.

12. The learned JMFC in the detailed impugned Order, has observed that the issuance of cheque in question by the Accused/Petitioner to the Complainant has been disputed, though her version regarding whether it bears her signatures or not, is inconsistent. At the time of framing of Notice under Section 251 Cr.P.C., she denied that the signatures on the cheque belonged to her but in her statement under Section 313 Cr.P.C. while she initially stated that the cheque in question bears her signatures, but immediately thereafter retracted and the Court's observation in regard to the same, was recorded.

13. Furthermore, it was rightly contended on behalf of the Respondent that the reason for dishonour of cheque as per the Return Memo was "*Funds Insufficient*" and not "*Drawer's Signatures Differ*". Had the cheque been dishonoured for "*signatures not matching*", then may be the Petitioner was justified in seeking the examination of the disputed cheque through a Handwriting Expert. However, in the present circumstances there is no justification for allowing the Handwriting to be examined to prove the signatures.

14. Furthermore, the Petitioner has already examined herself as DW1. It



is only at this stage after her evidence was recorded, that she moved an Application for examination of handwriting on the cheque, by Handwriting Expert. Since it was her defence since beginning, that the cheque does not bear her signatures, nothing prevented her from moving such Application for examination of disputed cheque through a Handwriting Expert or else to have herself produced a Handwriting Expert to depose about the genuineness of the signatures on the cheque in question.

15. In this regard reference to the observations of the Apex Court in the case of Ajitsinh Chehuji Rathod (Supra) has been rightly placed. The Apex Court had observed that if the Appellant was desirous of proving the signatures on the cheque were not genuine, then the certified copy of the specimen signatures from the bank could have been procured and the bank officials could have been summoned and examined as defence witness for proving/disproving the genuineness of signatures on the cheque. It was alternatively observed that the presumption under NI Act albeit rebuttable, operates in favour of the Complainant. It is for the Accused to rebut such presumption by leading appropriate defence evidence and the Court cannot be expected to assist the Accused to collect the evidence on his behalf.

16. Therefore, to seek the cheque to be sent to a Handwriting Expert in these circumstances, is completely unwarranted. Since the matter is still at the stage of Defence Evidence and if Defence evidence has not been closed, the Petitioner is at liberty to adduce any evidence in support of her defence.

17. The Application has been rightly dismissed by the learned JMFC by



observing it to be not only belated, but also being without merit. There is no infirmity in the impugned Order and the present Petition is hereby, dismissed.

18. The Petition stands disposed of along with the pending Application(s).

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 18, 2025

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