

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

**Crl. Misc. No.M-17427 of 2015 (O&M)
Date of decision : 09.10.2015**

M/s S.K. Electricals & another

.....Petitioner(s)

Versus

M/s Vishnu Metals

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Bharat Bhushan Sharma, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

CRM No.33494 of 2015

For the reasons set out in the application, same is allowed as prayed for and accompanying documents Annexures P-8 & P-9 are hereby allowed to be taken on record.

CRM No.M-17427 of 2015

This petition has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 20.04.2015 (Annexure P-2), passed by the Additional Sessions Judge, Faridabad who dismissed the application filed by the

petitioner seeking permission to lead additional evidence at the appellate Stage.

It is necessary to refer to the back ground and then the facts pleaded in the petition. A complaint under Section 138 of the Negotiable Instrument Act was moved by the respondent against the present petitioner which was allowed and the petitioner was convicted and sentenced vide judgment dated 07.08.2014.

Aggrieved with the judgment, the petitioner had filed an appeal in 2014. During the pendency of the appeal petitioner moved an application on 20.04.2015 intending to place on record a complaint made by him to the Commissioner of Police, Faridabad against the respondent alleging that the cheque had been misutilized by the complainant. The petitioner also wanted to place on record the order passed by Judicial Magistrate Ist Class, Faridabad in a complaint filed by the petitioner against the respondent in which he had been summoned. The petitioner also wanted to further cross-examine the complainant regarding the receipt of material.

The complainant did not choose to file reply and the Additional Sessions Judge dismissed the application and posted the appeal for final hearing. The concluding para of

the order reads as under:-

"5. By way of this application, the applicants intended to further cross-examine the complainant on some material aspects. On perusal of trial court record, it is proved that complainant has been cross-examined at length by the learned defence counsel on two dates i.e. on 19.11.2012 and 14.12.2012. It is argued by learned counsel for respondents that no provision is mentioned which is correct. The appellant did not highlight any new thing which was either not in his knowledge or possession. The allegation is only that the previous counsel did not take the brief seriously and miserably failed in performing his professional duties. However, no complaint in this regard is made against the previous counsel before the Bar Association of Punjab & Haryana. Beside this, the complaint to Commissioner of Police against the complainant or the summoning order which the appellant intended to produce could have been produced by the appellant at the time of defence evidence. But while appearing as defence witness the appellant did not produce any such document. In view of this, the appellant had took ample opportunities before the learned trial court to lead evidence. As such, the document as well as material question for cross-examination are not necessary to dispose of the present appeal. In view of the same, the application is hereby dismissed."

I have heard the counsel at length.

The counsel for the petitioner contends that the petitioner wanted to keep on record the copy of the complaint given by the petitioner to the Commissioner of Police and also the complaint filed by the petitioner against the complainant and wanted to further cross-examine the complainant with respect to the receipts.

It would be necessary to reproduce the contents of the application filed by the petitioner seeking permission to lead additional evidence. It reads as under:-

- 1. That in the above noted matter, the previous counsel of the accused/appellant could not properly cross examine the complainant on the point of transaction of alleged material to the accused.*
- 2. That apart from this, the relevant document i.e. Complaint to C.P. Faridabad regarding the conduct of the complainant as well as the summoning order passed by Shri Mohit Mishra, JMIC, Faridabad along with complainant and bail order could not be produced on the file inadvertently. Same are must required for the fair disposal of the matter and to meet the ends of justice.*

It is, therefore, prayed that keeping in view the above facts and circumstances, application in hand may kindly be allowed accordingly in the interest of justice, equity and fair-play."

The date of institution of the complaint is not available but the title shows that the complaint could have been filed in 2011 as the case number is 992 of 12.11.2011. The petitioner had been convicted vide judgment dated 05.08.2014. The appeal was filed in 2014. After a number

of months, the application was filed by the convict that he could not properly cross-examine the complainant on the point of transaction and he wanted to place two documents on record. The petitioner failed to mention the important facts or details of the case and their relevance. He had even failed to aver in the application the date on which the complaint was given to the Commissioner of police. The petitioner had failed to show even now, the relevance of the documents sought to be produced at the appellate stage. The copy of those documents have not been made available either. The application was vague and was rightly rejected and there is no reason to take a different view.

The petition is dismissed.

09.10.2015

sunil

**(ANITA CHAUDHRY)
JUDGE**