

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-22312 of 2015

Date of Decision: July 13, 2015

Sharma Glass Trading Company Branch Office Rose Colony
Patiala through its Proprietor Sh.Pardeep KumarPetitioner

Versus

Jagdish Kumar son of Sh.Arjan DassRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Sanjiv Gupta, Advocate for the petitioner.

<><><>

TEJINDER SINGH DHINDSA, J.

The present petition filed under Section 482 of the Code of Criminal Procedure is directed against the order dated 11.6.2015 passed by the learned Judicial Magistrate Ist Class, Patiala in terms of which an application moved by the complainant (respondent herein) to prove a compromise-deed dated 9.4.2014 by way of secondary evidence has been allowed.

2. Suffice it to notice that complaint under Sections 138/142 of the Negotiable Instruments Act had been filed by the complainant (respondent herein) against the accused (petitioner herein). Application was moved by the complainant stating that the accused had signed a compromise-deed dated 9.4.2014, original of which had been retained by the accused, and he had issued the cheques in question in pursuance to such compromise-

deed dated 9.4.2014. An application had been moved by the complainant for directing the accused to produce the original of such compromise-deed dated 9.4.2014, but the accused had denied the execution and existence of such document. Accordingly, permission was sought in the application to prove a copy of such writing/compromise-deed by way of secondary evidence. It is such application that has been dealt with and allowed in terms of passing the impugned order dated 11.6.2015, Annexure P4.

3. Having heard learned counsel for the petitioner at length, this Court is of the considered view that no ground for interference is made out.

4. It is well settled proposition of law that mere exhibition of document does not render proof of the same and even the issue as to whether secondary evidence was possible or not would be a matter which could be made a subject for argument at the relevant time. Receipt of secondary evidence does not dispense with requirement of proof in the manner required by law. Mere assignment of a document as an exhibit does not amount to proof or acceptance of the case that the ground for reception of secondary evidence has been established.

5. In **Bipin Shantilal Panchal v. State of Gujarat and another, (2001)3 SCC 1**, the Hon'ble Supreme Court in a case under the provisions of the code of Criminal Procedure had observed that the practice to hold up trial for consideration of admissibility or otherwise of the document ought to be confined only to situations where the admissibility has a fundamental

bearing when it is not admissible at all i.e. when it is not duly stamped. The Apex Court had observed as under:

"It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. Such practices when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings."

6. While shedding light on the procedure that should be adopted during the course of trial, the Apex Court had held as under:

"When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item or oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view

there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed).

The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.”

7. In the present case, the accused (petitioner herein)

would be at liberty to join issues on genuineness or otherwise of the compromise-deed by a stout contest at the trial. Such safeguard in favour of the accused (present petitioner) has already been incorporated in the impugned order dated 11.6.2015 and the operative part of which is couched in the following terms:

“Accordingly, present application for leading secondary evidence to prove writing/compromise dated 9.4.2014 is allowed, subject to proof of its existence, execution and admissibility.”

8. This Court does not find any infirmity or illegality in the impugned order.

9. Petition dismissed.

July 13, 2015

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)