IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-28985 of 2014 (O&M)
Date of decision : July 21, 2015

Shashi Sharma
... Petitioner

vs.

Manav Mehra
... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Chaudhary, Advocate
for the petitioner.
Mr. Arvind Kashyap, Advocate
for the respondent.

Surinder Gupta, J

CRM-22661-2015

Documents Exhibits C-3 to C-6 are taken on record.

CRM is allowed.

CRM-M-28985-2014

The petitioner impugns the order dated 10.4.2014 passed by the trial court whereby application under Section 311 Cr.P.C. Filed by petitioner seeking permission to lead additional evidence by summoning record of State Bank of India Sector 68, Mohali and of clearing house of that bank was declined.

The petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. The allegations as incorporated in the complaint are that respondent had issued two cheques of total amount of Rs.20 lacs drawn on State Bank of Patiala, Sector-36-D, Chandigarh in discharge of his liabilities. Both the cheques when presented were dishonoured and returned with memo (insufficient funds). After conclusion of evidence of petitioner, statement of the respondent under Section 313 Cr.P.C. was recorded. Thereafter, the respondent moved an application seeking dismissal of the complaint on the ground that statutory notice was served on the respondent after expiry of the period of 30 days of the receipt of intimation from the bank. It was at this stage that the petitioner moved an application under Section 311 Cr.P.C. to call the record of State Bank of

India, Sector 68, Mohali and of the clearing house of State Bank of India , Sector 17-B, Chandigarh to prove the fact that in fact the cheques were with the clearing house on 8.10.2012 and were sent to State Bank of India, Sector 68, Mohali on 9.10.2012, as such, the question of receiving intimation of cheques on 06.10.2012 did not arise. The learned trial court declined the prayer of the petitioner with the observation as follows:-

> " *Perusal of case file transpires that on appearance of accused notice of accusation was served on 19.07.2013 u/s 251 Cr.P.C. Complainant led its evidence and after examining two witnesses closed the same at its own on 22.03.2014. Thereafter, statement of accused u/s 313 Cr.P.C. On 11.04.2014. Complainant had the opportunity to lead its entire evidence. It is only on filing of an application by defense for dismissal of his complaint that complainant filed instant application for additional evidence, which indubitably is for filing of lacuna left in the case of complainant. It is an established law that prosecution can not be allowed to fill up the lacuna left in his case at a belated stage after the accused discloses its defense. In present case, it is already fixed for recording of defense evidence, no ground is made out for allowing the complainant to lead additional evidence, on a point that was in its knowledge from the beginning of this case and that could have been proved at the time of when evidence on behalf of complainant was being led. Resultantly, finding the instant application to be merit less, same is dismissed. File be put up upon 24.07.2014 for hearing arguments of parties on application filed by defense and for defense evidence.*"

I have heard learned counsel for parties and perused the paper book with their assistance.

Learned counsel for the petitioner has argued that the petitioner presented the cheque for payment to his bank which was State Bank of India, Sector-68, Mohali. The bank sent the cheques for payment to the clearing house. The cheques were dishonoured and the bank of the accused i.e. State Bank of Patiala Sector-36-D, Chandigarh intimated the bank of the petitioner that the cheques have been dishonoured for want of sufficient funds. The same memo was handed over to the complainant by the bank. As the date on memo of State Bank of Patiala was mentioned as 6.10.2012, the petitioner mentioned the same date in his complaint. In fact the cheques were in the clearing house on 8.10.2012 and intimation to the bank of petitioner was sent on 9.10.2012 and this fact can be proved from the record of the bank and the record of the clearing house. The evidence sought to be produced is material evidence for the just and proper decision of the case and the trial court has committed grave error of law while dismissing the application.

The learned Counsel for the respondent while referring to the complaint filed by the petitioner has pointed out that in para 15 and 17 of the complaint, the petitioner has repeatedly mentioned that the intimation of return of cheque with the endorsement "funds insufficient" was received on 6.10.2012. This fact was also stated by the complainant when she appeared as CW-1. Now the complainant can not be allowed to retract from her averments in the complaint and the admissions made in her statement. The evidence is already complete. The respondent has disclosed his defence when his statement under Section 313 Cr.P.C. was recorded and also in the application seeking disposal of the complaint, as such, the petitioner can not be allowed to fill up the lacuna. In support of his contentions, he has relied upon the observations in case ***Budh Ram vs. State of Punjab,*** *1996(2) RCR (Criminal) 270.*

A perusal of the paper book, documents placed on record and from the submissions of the learned counsel for the parties, it is apparent that the learned Trial Court while passing the order dated 10.07.2014 has ignored this fact that the petitioner wants to place on record documentary evidence which he could not earlier produce because of omission on his part as he was under a wrong impression about date of dishonour of cheque. The memo referred in the complaint as Annexure C-5 and C-6 were in fact the memo sent by the bank of respondent to the bank of petitioner. The bank of the petitioner did not issue any separate memo intimating the petitioner about the reasons for dishonour of cheque. The specific plea of the petitioner that on 8.10.2012 both the cheques were before the clearing house as such the question of return of cheques or sending of intimation to the petitioner on 6.10.2012 can be proved by producing bank documents which were not in her notice. Even otherwise the petitioner wants to place on record the documentary evidence from the office of the bank which he can not fabricate at this stage. The evidence sought to be produced is very material for just and proper decision of the case and while producing of this evidence the respondent will not be put to any prejudice.

In the citation referred by the learned counsel for petitioner the court had allowed the recall of the witness after the conclusion of evidence and recording statement of the accused under Section 313 Cr.P.C. and it was under those circumstances, the court had observed that the prosecution has sought to be produced evidence to fill up the lacuna. The observations made in that case are not applicable to the facts and circumstances of the instant case.

In view of my discussion above, this petition has merits and is allowed. The order passed by the trial court dated 10.7.2014 (Annexure P-15) is set aside and the application filed by the petitioner seeking production of additional evidence is allowed.

(Surinder Gupta)
Judge

July 21, 2015
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