

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-29115-2014

Date of decision : 13.02.2015

Ram Dass and another

... Petitioners

Versus

Rakesh Bedi and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.H.S.Dhindsa, Advocate
for the petitioners.

Mr.Rahul Rampal, Advocate
for respondent No.1.

REKHA MITTAL, J.

The present petition lays challenge to order dated 29.05.2014 (Annexure P6) passed by the Judicial Magistrate Ist Class, Ludhiana whereby application under Section 311 the Code of Criminal Procedure (Anneuxre P4) and application for detaining the original agreement (Annexure P5) have been dismissed.

The facts relevant for disposal of the present petition are that the petitioners filed complaint under Section 138 of the Negotiable Instruments Act 1881 (in short 'the Act') read with Section 420 of the Indian Penal Code on the premise that the petitioners entered into an agreement for transfer of possession of agricultural land situated in village Bhamma Kalan in favour of respondent No.1 and in lieu thereof, respondent No.1 issued the cheque in question of Rs.10 lacs in favour of the petitioners which got dishonoured on its presentation to the bank inviting criminal liability after

due compliance with the provisions of Section 138 of the Act. The petitioners (complainants) adduced their evidence after notice of accusation was served upon the respondent. The accused examined witness in defence and produced on record agreement to sell purportedly executed between the parties. Thereafter, the application was filed under Section 311 Cr.P.C. for additional evidence on the plea that signatures of the complainants on Ex.R1 are forged and fabricated and as such they wanted to examine a hand writing expert to submit a report on the basis of comparison of admitted / standard signatures of the complainants with disputed signatures on Ex.R1 which came to be dismissed by the trial Court vide impugned order dated 29.05.2014.

Counsel for the petitioners contends that as copy of the agreement to sell produced on record by the complainants varies in important aspects from the agreement Ex.R1 produced by the accused, it is necessary to examine a hand writing expert for just decision of the case but the learned trial Court has committed a gross error in declining prayer of the petitioners.

Counsel for respondent No.1-accused has submitted that as there is no dispute between the parties that the alleged agreement was executed between them and the accused issued the cheque in question in view of the agreement, the evidence now sought to be led has no relevance for adjudication of the matter in controversy much less just decision of the case.

I have heard counsel for the parties and perused the records.

The agreement in question is not the subject matter of the

criminal proceedings initiated by the complainants against the respondent as the accused has not denied issuance of the cheque in dispute on the basis of the alleged agreement to sell. The primary dispute between the parties is if dishonour of cheque in question in the circumstances of the present case would attract penal provisions prescribed in Section 138 of the Act. In this view of the matter, I find merit in the contentions of the respondent that evidence sought to be led by the petitioners by invoking the provisions of Section 311 Cr.P.C. is not germane to the issue in controversy, therefore, no fault can be found with the impugned order rejecting prayer for additional evidence.

For the reasons aforesaid, finding no merit, the petition is dismissed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

February 13, 2015.

DK