

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

CRM No. M-30187 of 2015

Date of decision: - 21.09.2015

M/s Varun Enterprises

...Petitioner

Versus

Sunita Punia and another

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. B.K. Bagri, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present petition under Section 482 Cr.P.C. for setting aside the order dated 04.08.2015, passed by Judicial Magistrate, 1st Class, Chandigarh, vide which, application under Section 311 Cr.P.C. was dismissed.

2. Relevant facts of the case that present petitioner filed complaint under Section 138 of The Negotiable Instruments Act (hereinafter to be referred as 'The Act') as respondent No.1 issued cheques of ₹54,400/-, ₹58,200/-, ₹36,000/-, ₹58400/- and ₹79,500/- but same remained unpaid. Statement of petitioner K.L. Rawal was recorded as CW-1. Because of mistake on the part of complainant's counsel legal notice was wrongly tagged and not enclosed the documents with the complaint. Later on,

petitioner came to know about this mistake. Thereafter, application was moved for consolidation of both the two complaints pending in two different Courts of learned Judicial Magistrate, 1st Class at Chandigarh Courts. Notice of the application was issued by Chief Judicial Magistrate, Chandigarh but learned Judicial Magistrate, 1st Class, Chandigarh without waiting for the outcome of the application dismissed the complaint of petitioner/complainant. As such, the application became infructuous. After pronouncement of judgment dated 17.03.2015, complainant visited his counsel and application under Section 311 Cr.P.C. was filed. Learned lower Courts failed to appreciate the settled principle of law that party cannot be debarred to place on record any document. Learned counsel for the petitioner also submitted that as per settled proposition of law, the witness can be recalled for cross-examination and the same remedy cannot be denied merely on account of delay.

3. Petitioner filed revision petition against order dated 04.08.2015, passed by learned Judicial Magistrate, 1st Class, Chandigarh but as revision petition was not maintainable against the interlocutory order, the said revision petition was withdrawn on 28.08.2015 and as such present petition before this Court.

4. Learned counsel for the petitioner also placed reliance upon judgment from Hon'ble Supreme Court in case **Mannan Sk. and others Vs. State of West Bengal and another**, 2014(4) Crimes 119, wherein law was laid down that if evidence by way of statement of any witness is required for just decision of the case, the same must come on the file.

5. Having considered the submissions made by learned counsel for the parties and relevant facts of the case, this Court is of the considered

view that petitioner was given ample opportunities to lead the evidence. In that process, the petitioner has examined himself as CW-1 and the said witness was cross-examined. The only contention raised by learned counsel for the petitioner that there were defects in the legal notice. That way, petitioner wants to reopen the entire case when complainant was already put to cross-examination and defence of the accused was also unfolded. No doubt evidence should be allowed to be led liberally at trial stage. But while doing so the Court has to see the rights of both the parties and the stage of the case. In the present case, learned Magistrate has rightly exercised discretion lawfully vested with him while disallowing the additional evidence on the ground that ample opportunities were given to the complainant and defence of accused was already disclosed. The application was filed at much belated stage. More so, additional evidence cannot be allowed just to fill-up the lacunae in the case.

6. Such a law was laid down by Hon'ble Supreme Court in case **Natasha Singh Vs. Central Bureau of Investigation, (2013) 5 Supreme Court Cases 741** that power under Section 311 of Code of Criminal Procedure is to be exercised judiciously and not arbitrarily so as to enable the Court to determine the truth and to render a just decision.

7. In view of above, the present petition is without any merit and same stands dismissed.

September 21, 2015

naresh.k

(SHEKHER DHAWAN)
Judge