

CRM-M-31423-2015

[1]

In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision:16.09.2015

Siddharth Ray

...Petitioner

Versus

Bharat Sanchar Nigam Limited, Jalandhar and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Pawan Girdhar, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 21.07.2015.

Learned counsel for the petitioner has submitted that trial Court has erred in dismissing the applications moved by the petitioner under Section 311 Criminal Procedure Code, 1973 ('Cr.P.C.' for short) and for taking specimen handwriting of the petitioner for comparison with the body of the cheques in question.

In the present case, petitioner is facing trial qua commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 with regard to dishonour of

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cheques dated 31.07.2004 and 15.08.2004. When the case was listed for defence evidence, petitioner moved an application under Section 311 Cr.P.C. for recalling CW-1 for further cross examination.

Section 311 Cr. P.C. reads as under:-

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Thus, as per the above provision, Court has ample power to summon any witness during trial, if his/her evidence appears necessary for the just decision of the case.

A perusal of the impugned order reveals that the case is pending for defence evidence for the last 5 years. CW-1 was duly cross-examined by the petitioner. Petitioner could not be allowed to recall the witness to fill up the lacuna, if any, in his case. In these circumstances, the trial Court had rightly dismissed the application moved by the petitioner under Section 311 Cr.P.C.

Petitioner moved another application for taking his specimen handwriting for comparison with the body of the cheques in question. The said application was rightly dismissed by the trial Court as the cheques in question are duly signed by the petitioner.

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Assuming that the petitioner had given blank signed cheques to the complainant then it is obvious that he had himself allowed the complainant to fill up the same. It has also been noticed by the trial Court that the petitioner has been filing one application after the other and had availed number of opportunities for concluding his evidence. The case was pending for defence evidence for about 5 years.

In the facts and circumstances of the present case, no ground for interference by this Court, is made out.

Dismissed.

September 16, 2015
kapil

(SABINA)
JUDGE