

111 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-3979 of 2015 (O&M)
Date of Decision: 11.2.2015**

Raj Kumar Aggarwal

....Petitioners

vs.

Balbir Kumar Aeron

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.K. Bajaj, Advocate
for the petitioner.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgement should be reported in the Digest?*

Kuldip Singh J. (Oral)

Challenged in the present petition is order dated 15.1.2015 passed in criminal complaint No.392/2 of 2011 by Ld. Judicial Magistrate, 1st Class, Jalandhar whereby the application of the accused-petitioner under Section 311 of Cr.P.C., 1973 for summoning the witnesses, was dismissed.

The brief controversy of the present petition is that petitioner is an accused in the complaint under Section 138 of Negotiable Instruments Act, 1881 (for short the Act). In defence evidence an application under Section 311 Cr.P.C. was filed in which certain witnesses i.e. Clerks from Sales Tax Department Jalandhar, Income Tax Department Jalandhar and from the Office of Registrar of

Firms, Punjab, Sector-17 Chandigarh were sought to be examined as defence witnesses to explain the fact that whether any dissolution deed of firm M/s Guru Kirpa Construction, 167-168, Hardeep Nagar, Jalandhar executed between Ritu Aeron and Raj Kumar Aggarwal has been filed or not with the said departments.

I have heard learned counsel for the petitioner and gone through the file very carefully.

Learned counsel for the petitioner-accused has stated that the case is still at the defence evidence stage. If the case is at the stage of defence evidence, it is not understood how application under Section 311 Cr.P.C. could be filed or Section 311 Cr.P.C. could be invoked? Learned counsel for the petitioner further state that case of the complaint is that 14 cheques were issued to him by the accused in his personal capacity. The statement of the accused under Section 313 Cr.P.C. is that these cheques were forcibly taken in the year 2010. The examination of aforesaid witnesses will not prove that any force was used. Proving the fact as to whether there was any dissolution between Ritu Aeron and Raj Kumar Aggarwal-Complainant will not prove the defence of the accused. The trial Court has taken the same view. It has been further noticed that earlier also one application under Section 311 Cr.P.C. was filed on 28.11.2014 which was partly allowed. In the said application there was no mention about these witnesses. The trial Court has also noticed that the cross-examination of the complainant CW-1 shows that accused-applicant admitted the execution of the said dissolution deed but merely taken the plea that same has been

got executed from him under pressure and undue influence. Accused himself has admitted that the cheques were not issued from the account of partnership firm M/s Guru Kirpa Construction, rather from an account being maintained by him as a proprietor of firm M/s Guru Kirpa Construction. Therefore, the said evidence sought to be led, is not material for the just decision of the case. It being so, I find no illegality in order dated 15.1.2015 passed by Ld. Judicial Magistrate, 1st Class, Jalandhar.

Petition is accordingly dismissed.

(KULDIP SINGH)
JUDGE

11.2.2015
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