

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No. 195 of 2014

Date of decision : May 21, 2015

Ashish Juneja

...Petitioner...

versus

Ashok Kumar

...Respondent...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Prateek Rathee, Advocate,
for the petitioner.

Mr. Sonu Giri, Advocate for
Mr. Sandeep Sharma, Advocate,
for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? ✓
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

Challenge in this revision petition preferred by Ashish Juneja-revisionist-petitioner is to the order dated October 30, 2013 (Annexure P-3) passed by Id. Additional Sessions Judge, Gurgaon whereby an application under Section 311/391 of the Code of Criminal Procedure (for short, 'Cr.P.C.') for permission to lead additional evidence, during the pendency of appeal under Section 374 (3) (b) Cr.P.C. against the judgment of conviction dated December 20, 2012 and order of sentence dated December 24, 2012 under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'Act'), was dismissed.

2. In response to notice of motion issued by this Court, Mr. Sandeep Sharma, Advocate appeared and represented the respondent.

3. While assailing the impugned award dated October 30, 2013 (Annexure P-3) passed by Id. Additional Sessions Judge, Gurgaon, it has been contended by learned counsel for petitioner that impugned order is the result of mis-appreciation of legal proposition, actual and factual facts of the case as well as misapplication of judicial mind. The impugned order has been passed by Id. trial court in casual and mechanical manner. Id. Additional Sessions Judge has failed to appreciate the fact that if petitioner is not given an opportunity to bring additional evidence on record, which amounts to denial of right to a fair and proper trial. Moreover, petitioner cannot be made to suffer for the negligence and incompetency of his erstwhile counsel. In fact, due to the lack of proper legal advice from erstwhile counsel, petitioner could not place on record documents before the trial court, showing the pendency of another complaint preferred by him under Sections 379, 384, 420, 467, 468, 471, 120-B/34 IPC, which has direct impact upon the proceedings involved in the instant case. Object of Section 311 Cr.P.C. is also that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of witnesses examined from other side. Such an evidence can be adduced by either party at any stage of inquiry or trial or other proceedings. The mere fact that application has been moved at the appellate stage is also no ground

to decline it, when it is helpful for imparting justice to the parties. The documents sought to be proved on record by way of additional evidence would be helpful in deciding the controversy judiciously. Thus, impugned order dated October 30, 2013 (Annexure P-3) passed by Id. Additional Sessions Judge, Gurgaon is liable to be set aside by way of acceptance of instant revision.

4. On the other hand, learned counsel for respondent, Mr. Sandeep Sharma has strongly opposed the submissions made by learned counsel for petitioner and has submitted that request for additional evidence has rightly been declined by Id. trial court. No party can be allowed to fill-up the lacuna in its case only on the ground that counsel has since been changed. Moreover, no action has been taken by petitioner against his erstwhile counsel, who has been blamed for improper advice. Petitioner was well aware about the pendency of complaint, copy of which, he intends to place and prove on record that too, during the pendency of appeal, whereby he has challenged his conviction and sentence awarded to him by the Id. Magistrate.

5. It has further been stressed by the Id. counsel that no doubt, Court has got vast powers under Section 311 Cr.P.C. but that cannot be exercised simply to help one party and to cause prejudice to other side. Since, there is no infirmity or illegality in the impugned order and revision is without any merit, instant petition is liable to be dismissed.

6. This Court has given a deep thought to the submissions made by learned counsel for the parties and has perused the records

available.

7. Undoubtedly, petitioner has been convicted and sentenced under Section 138 of the Act by Id. Magistrate vide order October 30, 2013 (Annexure P-3) and appeal is pending before the Id. Additional Sessions Judge, Gurgaon preferred by him challenging his conviction and sentence. No effort has been made by petitioner for placing on record copy of complaint under Sections 379, 384, 420, 467, 468, 471, 120-B/34 IPC, which is alleged to have been preferred by him against respondent-complainant, much prior to the filing of complaint under Section 138 of the Act by respondent-complainant against him. Moreover, the mere fact that complaint has not been placed on record does not *ipso facto* mean that great prejudice has been caused to petitioner, especially, in the circumstances that a specific stand has been taken by him in his defence that cheque in question was misplaced prior to its issuance.

8. At this juncture, it would be desirable to have a glance upon Section 311 Cr.P.C., which reads as follows:-

“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 or 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.”

A perusal of the aforesaid provision reveals that it is a discretion provided to the Court where an inquiry, trial or other

proceedings under the Cr.P.C. is pending, to recall and re-examine any such person already examined, if his evidence appears to it to be essential for the just decision of the case. The intention of Legislature is to empower and enable the Court to come to a correct finding and for that reason, the Court would be fully justified in permitting production of evidence whether documentary or oral where the Court feels that same is necessary for the just decision of the case and no fetters can be put in exercise of these powers by the Court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the Court. Copy of complaint, which is sought to be placed and proved on record by way of additional evidence is/was very much in the knowledge of petitioner but for the reasons close to his chest, he did not place on record. Therefore, erstwhile counsel cannot be blamed for the same. Moreover, this Court is of the considered view that the said record is not at all essential for the proper and just adjudication of the matter in controversy. The Id. trial court has rightly declined the relief and has dismissed the application.

9. Since, there is no infirmity, illegality or impropriety in the impugned order dated October 30, 2013 (Annexure P-3) passed by Id. Additional Sessions Judge, Gurgaon, as such, instant petition is dismissed.

May 21, 2015

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**(JASPAL SINGH)
JUDGE**