

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2611 of 2015 (O&M)
Date of Decision : 04.08.2015

Vaneet

.....Petitioner

Versus

Ravinder Singh Sidhu

....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

Present: Mr. Hoshier Singh Jaswal, Advocate
for the petitioner.

R.P. Nagrath, J.

The instant revision has been filed to challenge order dated 02.06.2015 passed by learned trial Court whereby the prayer of the complainant to produce on record the original receipt dated 01.02.2012 statedly executed by the petitioner in token of having received an amount of ₹ 3 lacs from the complainant has been allowed.

2. The respondent-complainant has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner in respect of dishonour of cheque of ₹ 3 lacs. The amount was statedly received by the petitioner on 01.02.2012 vide receipt Ex. C1 and the cheque in question issued by the petitioner in favour of the complainant is dated 20.03.2013.

3. The respondent-complainant led his evidence and the case was at the stage of defence evidence when the application

was filed by the complainant.

4. I have heard learned counsel for the petitioner, perused the impugned order and the paper-book.

5. During the course of evidence, the respondent-complainant relied upon receipt copy of which is Ex. C-1. The respondent was also cross-examined on this receipt and at the end it was suggested that receipt is not signed by the petitioner-accused.

6. The petitioner had also moved a separate application before learned trial Court for permission to examine the handwriting expert for comparison of the signatures on the receipt Ex. C-1 and also the cheque Ex. C-2. Learned trial Court allowed the application of the petitioner to examine the handwriting expert for comparison of signatures on the receipt but declined the same in respect of the cheque.

7. Learned counsel for the petitioner referred to the observations of Bombay High Court in **Amit Kumar Jaiprakash Singh vs. Mahesh Mahadev Dabholkar and others, 2008 (1) Bom.C.R. (Cri.) 998** to contend that the prayer to produce original documents at the defence stage cannot be permitted. I am unable to agree with the contention of learned petitioner's counsel.

8. 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 its 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.”

9. In **Mannan Shaikh and others vs. State of West Bengal and another, 2014 (13) SCC 59**, Hon'ble Supreme Court as under:-

*“The aim of every court is to discover truth. Section 311 of the Code is one of such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word ‘shall’. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words ‘**essential to the just decision of the case**’ are the key words. The court must form an opinion that for the just decision of the case recall or re-examination of the witness is necessary. Since the power is wide it’s exercise has to*

be done with circumspection. It is trite that wider the power greater is the responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution to fill-up the lacuna. Whether recall of a witness is for filling-up of a lacuna or it is for just decision of a case depends on facts and circumstances of each case. In all cases it is likely to be argued that the prosecution is trying to fill-up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine.”

10. The facts of the case before Hon'ble Supreme Court in **Mannan Shaikh's case (supra)** were that PW-15 SI Dayal Mukherjee stated in the court that he had recorded the statement of deceased-Rupchand Sk. Thus, this fact was known to the defence. He was cross-examined by the defence. Inadvertently, the said statement was not brought on record through PW-15. Rupchand Sk died after the said statement was recorded. The said statement, therefore, became very vital to the prosecution. Hon'ble Supreme Court held as under:-

“.....It is obvious that the prosecution wants to treat it as a dying declaration. Undoubtedly, therefore, it is an essential material to the just decision of the case. Though, the fact of the recording of this statement

is deposed to by PW-15, since due to oversight it was not brought on record, application was made under Section 311 of the Code praying for recall of PW-15. This cannot be termed as an inherent weakness or a latent wedge in the matrix of the prosecution case. No material is tried to be brought on record surreptitiously to fill-up the lacuna. Since the accused knew that such a statement was recorded by PW-15, no prejudice can be said to have been caused to the accused, who will undoubtedly get a chance to cross-examine PW-15.”

11. It is also quite well settled that comparison of signatures by the expert is permissible only with the signatures on original document and not on the photostat copy. Learned counsel for the petitioner has not disputed that Ex. C-1 is a copy of the receipt and not the original one. The petitioner himself has applied for comparison of signatures on the receipt with his standard or admitted signatures. If that be the position, it did not lie in the mouth of petitioner to challenge the order passed by learned trial Court for permitting to produce on record the original receipt, copy of which is already exhibited, for which comparison has been applied by the petitioner.

No ground. Dismissed.

August 04, 2015
jk

(R.P. NAGRATH)
JUDGE