

230

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

**CRR No.394 of 2015 (O&M)
Date of Decision: 13.05.2015**

Meer Singh @ Mir Singh

.....Petitioner

Vs

Bharat Lal

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Jasuja, Advocate
for the petitioner.

Mr. Karan Singh, 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?***

RAJ MOHAN SINGH, J.

[1]. Petitioner assails order dated 20.01.2015 passed by Judicial Magistrate Ist Class, Gurgaon vide which prayer of the petitioner for calling the record from the Bank has been dismissed.

[2]. Petitioner submitted that after receiving notice of the complaint, accused approached the complainant with a request not to proceed with the complaint and he handed over another cheque No.332361 dated 07.02.2014 in the sum of Rs.8,00,000/- and prayed that in the meantime he would arrange funds and, therefore, complainant would be having sufficient time to recover the cheque amount.

[3]. Apparently second cheque has not been presented by the complainant for its encashment under the alleged plea that on verification it was found that accused was not having sufficient funds in the Bank. Complainant wants to summon official of the Bank with record of account of the accused, statement of account for the period January 2014 to March 2014 and cheque book series issued to accused in serial No.332361 of Punjab National Bank.

[4]. The complainant further stated that accused has taken an defence that he has delivered the aforesaid cheque from continuous series of cheque to repay his Bank loan and complainant might have removed cheque involved in the instant case in connivance with Bank employee. The complainant further stated that aforesaid defence of the accused has been negated by the Bank employee while he stated that loan amount was paid by accused in cash and not by any cheque.

[5]. The complainant prays for resolution on the aforesaid issue and sought indulgence of the Court for summoning the Bank employee along with relevant record in order to establish whether cheque No.332361 was part of series of cheque in which alleged defence has been taken by accused that it was brought out from that series in which loan amount was repaid by accused to the Bank. The plea has been contested by the respondent that at this stage, complainant cannot be permitted to fill lacuna of the case particularly when the cheque No.332361 dated 07.02.2014 was never presented

to the Bank nor any material has been produced on record to show that the accused was not having sufficient funds in the Bank at the relevant time.

[6]. The petitioner described the aforesaid facts to be attending circumstances in which indulgence of the Court is being sought under Section 311 Cr.P.C. It is a settled principle of law that the Court at any point of time of inquiry, trial or proceeding can summon any person as witness or examine any person in attendance though not summoned as witness or recall or re-examine any person already examined, if in the opinion of the Court such evidence is just and proper for administration of the case.

[7]. Section 311 Cr.P.C., Court has ample powers to summon any person as a witness at any point state of inquiry trial or proceeding, if as such evidence is thought appropriate by the Court to be just and helpful in deciding the case in an effective manner.

[8]. The Court only becomes *functus officio* when it passes final judgment. Otherwise, before pronouncement of judgment, powers of Court cannot be guided by any restrictive mechanism. If in the opinion of the Court evidence sought to be adduced would serve helping hand in arriving at correct decision. The object underlying the principles in terms of Section 311 Cr.P.C., is to prevent failure of justice on account of any mistake by the party in bringing on record valuable evidence or leaving ambiguity in the statement. It is only the prerogative of the Court, but a legal duty has been imposed to

examine such witness which is necessary for doing justice between the parties. The determinative factor is the nature of evidence which would embark upon merits of the case.

[9]. In the present case issuance of subsequent cheque is claimed by the accused to be an act which according to him disentitles the claim of complainant as the said cheque was never presented before the Court and all issues should be decided by the trial Court with reference to evidence and on trial, party should be given all the opportunities to prove their case.

[10]. The cause of justice should not be throttled at the threshold of technicality if relevant record is allowed to be summoned from the Bank in the context of verifying whether the cheque in issue was subject matter of same series of cheques which were handed over by the accused for discharging his liability then the accused may have the relevant benefit, if it is proved in consonance thereafter, but at the same time if the cheque is not proved to be the part of series of cheque which were utilised for discharging loan liability, then in such an eventuality the complainant may have something to advance his case further.

[11]. At this juncture no final opinion can be made in respect of a course which should have been allowed by the trial Court.

[12]. The underlying principles were well defined because the consideration before the Court is to visualise as a determinative

factor that whether the evidence in question is essential for just decision of the case or not?

In **Hanuman Ram v. State of Rajasthan and others, AIR 2009 SC 69**, these underlying principles were well defined. In criminal trial, fair opportunity is required to be given to the parties to prove their case. The object of fair trial is *sine qua non* for administration of justice.

[13]. In **Hoffman Anreas v. Inspector of Customs, Amritsar 2000(10) SCC 430**, the Hon'ble Supreme Court has emphasized that the Court should adopt liberal view in the interest of justice particularly when the Court has unbridled powers in the matters as enshrined in Section 311 Cr.P.C.

[14]. Looking to the nature of prayer made and facts emerging on record, this Court is of the view that fair opportunity should have been given to the petitioner to summon the Bank people in order to establish background attached to cheque No.332361 dated 07.02.2014. Even if the cheque in issue may or may not be having any evidentiary value for want of presentation before the Bank and may not have advanced the cause of action but still it can be used as a piece of evidence in order to bring necessary incriminating fact/evidence on record at the instance of party who is seeking production of evidence thereof.

[15]. Looking to the entire controversy on record, this Court feels

that opportunity can be granted to the petitioner to summon the witness from Bank in the context of prayer made in the application.

[16]. Accordingly, impugned order dated 20.01.2015 passed by Judicial Magistrate Ist Class, Gurgaon is hereby quashed. Application for additional evidence filed by petitioner is allowed to the aforesaid extent.

[17]. Revision petition is allowed.

May 13, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE