

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

Criminal Revision No. 537 of 2015 (O&M)

Date of decision : 18.02.2015

M/s Ekta Handloom

.....Petitioner

Versus

M/s Bhatia Textiles

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashwani Gaur, Advocate
for the petitioner.

LISA GILL, J.

This petition has been filed impugning order dated 21.01.2015 whereby the petitioner's application for leading additional evidence at appellate stage has been dismissed. The petitioner is an accused in Criminal complaint No. 060700018772009 dated 03.02.2009/16.11.2012. The petitioner has been convicted and sentenced to undergo rigorous imprisonment for a period of one year and six months for commission of offence punishable under Section 138 of Negotiable Instruments Act and directed to pay ₹ 4,72,522/- as compensation to the complainant. The petitioner preferred an appeal challenging his conviction and sentence which is pending before the learned Additional and Sessions Judge, Panipat. The petitioner moved an application dated 03.12.2013 for leading additional evidence in defence in the following manner:-

- (i) To summon the account book/ledger book of the firm M/s Bhatia Textile for the year 2005-2006 and 2006-2007.

(ii) To summon the Income Tax Return record of the firm M/s Bhatia Textile, Proprietor Ritesh Bhatia, Resident of Mohit Nagar, Village Noorwala, Panipat, Tehsil and District Panipat for the year of 2005-2006, 2006-2007, 2007-2008.

(iii) To examine the forensic expert for determining the age of ink of signature of the accused and date and other writing in regard of firm and amount of the cheque No. 793928 dated 10.06.2008 for amounting Rs. 4,72,522/- of the Panipat Urban Co-operative Bank Ltd., Tehsil Camp, Panipat.

The said application has been dismissed vide order dated 21.01.2015.

Learned counsel for the petitioner submits that the sole reason that the petitioner had availed number of opportunities to lead evidence in his defence and still not produced necessary evidence cannot be a ground to dismiss his application. In case, there is failure of justice, additional evidence can be permitted by the appellate Court. Learned counsel for the petitioner relies upon the decision of Hon'ble the Supreme Court in **Ashok Tshering Bhutia versus State of Sikkim 2011 (4) SCC 402.**

The petitioner's stand was that the cheque in question had been given to the complainant by way of surety. It was not, to be presented for encashment. It is for this reason that

the petitioner now seeks to summon the account book/ledger book of the complainant's firm for the year 2005-06 and 2006-07 as well as its income tax record for the said years as well as year 2007-08. He further prays for forensic determination of the age of ink of signatures of the accused and the other writing on the cheque in question.

I have heard learned counsel for the petitioner at length and gone through the file.

There is no doubt that additional evidence can be permitted at appellate stage in a suitable case where the Court is satisfied that directing additional evidence would serve the ends of justice. It has been held by the Hon'ble Supreme Court in the case of **Ashok Tshering Bhutia** (supra) that this power must be exercised sparingly in exceptional cases having due regard to the concepts of fair play, justice and well being of society.

It is relevant to note that the present is not a case where no effective opportunity was afforded to the petitioner at the time of trial to lead evidence. It is a matter of record that as many as 31 effective opportunities had been afforded to him to lead evidence in defence. The petitioner examined one witness on 30.09.2011 and the trial remained pending for leading defence evidence for nearly 1½ years thereafter. Furthermore, learned counsel for the petitioner is unable to point out any failure of justice in the present case by dismissal of his application for leading additional evidence. Petitioner was aware of the stand taken by the complainant right at the outset.

The

additional evidence sought to be led is not such which has come to light at a later stage. Reason given in the application (Annexure P-2) in para 5 is of inadvertence. No ground has been made out for permission to lead additional evidence as prayed for.

Keeping in view the facts and circumstances of the case, I do not find any irregularity and illegality in the impugned order.

Present petition is, accordingly, dismissed.

February 18, 2015
rts

(LISA GILL)
JUDGE