

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

CRR No.588 of 2015

Date of decision: 17.03.2015

M/s Ekta Handloom

-----**Petitioner (s)**

V/s

M/s Shivam Traders

-----**Respondent(s)**

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. Ashwani Gaur, Advocate
for the petitioner(s).

HARI PAL VERMA, J.

Challenge in the present petition is to order dated 21.1.2015 passed by Additional Sessions Judge, Panipat, whereby the petitioner's application to lead additional evidence has been dismissed.

The petitioner is an accused in a Criminal Complaint No.060700018782009 dated 31.1.2009/ 6.7.2012 and has been convicted and sentenced to undergo rigorous imprisonment for a period of 1 year and six months for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. He

has also been directed to pay an amount of Rs.1,94,086/-, as compensation, to the complainant.

The petitioner has preferred an appeal before Additional Sessions Judge, Panipat challenging his conviction and sentence. During the pendency of this appeal, the petitioner has moved an application dated 3.12.2013 for leading additional evidence in his defence in the following manner:-

- i) *To summon the account book/ledger book of the firm M/s Shivam Textile for the year 2005-2006 and 2006-2007.*
- ii) *To summon the Income Tax Return record of the firm M/s Shiv Textile, Proprietor Mohit Kumar, Resident of H.No.15, Subhash Colony, Tehsil Town, Panipat, Tehsil & Distt. 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.793929 dated 10.06.2008 for amounting Rs.1,94,086/- of the Panipat Urban Co-Operative Bank Ltd., Tehsil Camp, Panipat.”*

The aforesaid application has been dismissed by the Additional Sessions Judge vide order dated 21.1.2015.

Learned counsel for the petitioner submits that the fact that petitioner has availed number of opportunities to lead evidence and had still not produced necessary

evidence, cannot be a ground to dismiss the application for leading additional evidence. He further submits that in case there is failure of justice, additional evidence can be permitted by the appellate Court. In support of his contention, he relied upon a judgment of Hon'ble the Apex Court in the case of **Ashok Tshering Bhutia v. State of Sikkim** 2011(4) SCC 402.

I have heard learned counsel for the petitioner and perused the record.

There is no dispute that additional evidence can be permitted even at appellate stage in a suitable case where the Court is satisfied that directing additional evidence would serve the ends of justice. However, such power must be used sparingly in exceptional cases having due regard to the concept of fair play, justice and well being of society.

In the present case, many effective opportunities have been granted to the petitioner to lead evidence at the time of trial. It is a matter of record that the petitioner was given as many as 35 opportunities to lead evidence in his defence. The petitioner has examined only one defence witness on 8.6.2011 and thereafter, the trial remained pending till 2.2.2013 for leading evidence in defence. In this manner, the case remained pending before the trial Court for a period of about 2 years for leading defence

evidence and the petitioner was aware of the stand taken by the complainant right at the very outset. Additional evidence sought to be led is not such which has come to the notice of the petitioner at a later stage. The reason given in the application is of inadvertence, which is usual in nature. Thus, no ground is made out for granting permission to lead additional evidence, as prayed.

Accordingly, considering the facts and circumstances of the case, I find that there is no irregularity or illegality in the impugned order.

Therefore, the present petition is dismissed, being without any merit.

March 17, 2015
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(HARI PAL VERMA)
JUDGE