

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-41130 of 2014

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Date of decision:25.2.2015

Karnail Chand

.....Petitioner

v.

Rakesh Chopra and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Naveen Sharma, Advocate for the petitioner.

Mr. T.S. Chandhok, Advocate for the respondents.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for setting aside/quashing the impugned order 20.10.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which an application filed under Section 65 of the Indian Evidence Act (hereinafter referred to as 'the Act') to lead secondary evidence to prove complaint and compromise between respondent No.2 and the petitioner has been declined.

Notice of motion was issued in this case.

Mr. T.S. Chandhok, learned Advocate has appeared on behalf the respondents and contested this petition.

I have heard learned counsel for the petitioner and learned counsel for the respondents and have gone through the record.

From the record, I find that Rakesh Chopra and Mohinder Ram-complainants filed complaint against Karnail Chand-accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'). An application was filed by the accused during the proceedings under Section 65 of the Act to prove the photo copy of the agreement and the complaint filed by the complainants against him. This application was filed by the accused though in the order it is written "has been filed by the complainant". Reply was filed. The learned Judicial Magistrate Ist Class, Jalandhar, vide order dated 20.10.2014 held that the applicant applied under the RTI Act and the Senior Superintendent of Police-cum-Public Information Officer, Jalandhar Rural replied that the record as asked for by the applicant is not traceable, as such, the same is not being provided to him. The Court below held that the mere fact that particular record is not traceable, the permission cannot be given to prove the same by way of secondary evidence as it has not come on record that said document had been lost or destroyed which is mandatory requirement of Section 65 of the Act. The Court below dismissed the application with liberty to the applicant to first summon the witness from the Department concerned to bring the relevant record as alleged in the application. A perusal of the impugned order shows that this order is as per law. The applicant is to prove the loss of the document and also that this document was in existence and it could only be proved by summoning the official witnesses with the record from the Police Department. Therefore, the impugned order passed by the Court below is correct as per law and no illegality has been committed by the

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learned Judicial Magistrate Ist Class, Jalandhar, while passing the impugned order dated 20.10.2014.

Therefore, finding no merit in this petition, the same is dismissed.

February 25, 2016.

(Inderjit Singh)
Judge

hsp