

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

CRM M-43943 of 2013

Date of decision :16.02.2016

Sandeep Dutt

....Petitioner

V/s

Ms Vidya Mahankali Rao

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Manish Soni, Advocate for the petitioner.

Ms. Jhum Jhum Sarkar, Advocate for the respondent.

RAJAN GUPTA J.

Present petition is directed against the order passed by Judicial Magistrate Ist Class, Gurgaon whereby application moved by petitioner under section 311 Cr.P.C has been rejected.

Learned counsel for the petitioner has assailed the order. According to him, plea under section 311 Cr.P.C. can be examined at any stage of the trial. The court has gravely erred in rejecting the same.

Prayer has been opposed by learned counsel representing the respondent.

Heard.

It appears that complainant filed a complaint under section 138 of the Negotiable Instrument Act, 1881 alleging that he had given nine paintings were given to the accused-respondent for a sum of ₹25,00,000/-. In order to discharge the said liability, respondent issued a cheque no. 519817 dated 11.02.2009 for ₹25,00,000/-drawn on Standard Chartered Bank, Connaught Palace,

New Delhi, The cheque was presented for collection but was returned vide memo dated 19.02.2009 with the remarks "insufficient funds". Thereafter, notice envisaged by the Act was served upon the respondent. On his failure to pay the amount in question, complaint under section 138 of the Act was instituted. Thereafter, trial proceeded. During proceedings, instant application was moved by petitioner for examination of bank official to prove certain account statements. Trial court, however, found that cheque in question had been returned with the remarks "insufficient funds". It, thus, rejected the application observing that evidence of bank official was not necessary. I find no infirmity with the order passed. It is inexplicable how evidence of the bank official or account statements are essential for just decision of the case. Petition is, thus, without any merit and is hereby dismissed.

February 16, 2016

Ajay

(RAJAN GUPTA)
JUDGE