

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 282

Criminal Revision No. 1254 of 2014 (O & M)
Date of Decision: *December 16, 2016*

Surjit Kumar

..... PETITIONER

VERSUS

Jaspreet Singh Bhaika

..... RESPONDENT

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. Satya Pal Jain, Senior Advocate, with Mr. Dheeraj Jain, Advocate and Mr. Vijay Kumar Chaudhary, Advocate, for the petitioner.

Mr. Onkar Singh Batalvi, Advocate, for the respondent.

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Jaspal Singh, J

1. Challenge in this revision petition is to order dated August 05, 2013 passed by the Judicial Magistrate 1st Class, Chandigarh.

2. Brief facts giving rise to the instant revision petition are that complainant - Jaspreet Singh Bhaika, lodged a complaint against the petitioner under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short, 'Act'). When the case was fixed for defence evidence, the petitioner expressed his desire to lead evidence in defence and at that time, he filed an application before the learned Magistrate seeking permission to lead additional evidence but that

2013. The aforesaid order was challenged by the respondent – complainant by way of revision petition before the Additional Sessions Judge, Chandigarh. Vide order dated July 15, 2013, the revisional court set aside order dated June 05, 2013 and directed the trial court to decide the application filed by the complainant afresh in view of observations made therein.

3. Petitioner challenged order dated July 15, 2013 passed by the Additional Sessions Judge before this Court by way of filing a petition viz. Criminal Miscellaneous No.M-28468 of 2013 titled 'Surjit Kumar vs. Jaspreet Singh Bhaika'. This Court, vide order dated September 02, 2013 issued notice of motion "limited to the observations made by the Revisional Court to decide the matter afresh in the light of the observations made in the order" and directed the trial court not to dispose of the application in the meantime. However, when the respondent put in appearance before this court and filed reply, it revealed that the application had already been decided in view of the observations made by the revisional court vide order dated July 15, 2013 and allowed by the trial court vide its order dated August 05, 2013, which necessitated the filing of instant revision petition challenging order dated August 05, 2013.

4. The contention of learned counsel for the petitioner is that order dated August 05, 2013 passed by the learned trial court is unsustainable for the simple reason that the application has been allowed merely relying on the observations made by the revisional court i.e. Additional Sessions Judge, Chandigarh in his order dated July 15, 2013, and at that time, the pleadings and arguments were not considered afresh.

5. On the other hand, contention of learned counsel for the respondent is that there is no legal flaw in the order which has been passed

by the trial Magistrate and same is absolutely in accordance with the order passed by the revisional court. The order whereby notice of motion was issued by the Court was not conveyed by the time when order dated August 05, 2013 was passed by the trial court. He further submits that even otherwise, an application under Section 311 Cr.P.C. is not legally maintainable which would clinch the entire controversy between the parties.

6. This Court has given a deep thought to the rival submissions made by learned counsel for the parties and scanned the impugned order(s).

7. Undisputably, an application under Section 311 Cr.P.C. was moved by the respondent – complainant which was dismissed by the trial court vide order dated June 05, 2013. However, the order passed by the Magistrate was set aside by learned Additional Sessions Judge while disposing of revision petition vide order dated July 15, 2013 and the trial court was directed to decide application under Section 311 Cr.P.C. in view of various observations made by him. By the time, present petition – accused approached this Court by way of revision petition and notice of motion was issued, learned Magistrate decided the application under Section 311 Cr.P.C. afresh, absolutely in view of observations made by the Additional Sessions Judge vide order dated July 15, 2013. The directions given by learned Additional Sessions Judge that application be decided afresh in view of observations made by him is absolutely unsustainable as the scope and jurisdiction of the revisional court is very limited. He could only have directed the trial court to decide the application under Section 311 Cr.P.C. afresh after hearing both the parties. Since impugned order dated August 05, 2013 has been passed by the learned Magistrate in view of observations made by the Additional Sessions Judge, the said order also cannot be termed

8. In the light of what has been discussed above, instant revision petition is accepted whereby impugned order dated August 05, 2013 is set aside. The trial court is directed to dispose of the application under Section 311 Cr.P.C. moved by the respondent – complainant, afresh without being influenced by any observation made by the Additional Sessions Judge in his order dated July 15, 2013.

9. It is expected that the application shall be disposed of after hearing learned counsel for the parties as well as perusal of the record, as expeditiously as possible but not later than 2 months from the date of receipt of a certified copy of this order.

December 16, 2016
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No