

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

**CRR No. 2370 of 2016 (O&M)
DECIDED ON: July 08, 2016**

ARVIND BHARDWAJ

.....PETITIONER..

VERSUS

DAVINDER KUMAR BANSAL AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Vikas Mohan Gupta, Advocate,
for the petitioner.

JASPAL SINGH, J.

Challenge in this revision petition is to the order dated May 09, 2016 passed by Additional Sessions Judge, Chandigarh whereby an application moved under Section 311 (later on converted into Section 391) Cr.P.C. for recalling CW1-Davinder Kumar Bansal-respondent No.2 and CW2-Bank Official has been dismissed.

2. The contention of learned counsel for the petitioner is that complainant-Davinder Kumar Bansal when subjected to cross-examination before the ld. trial court, it has been stated by him that he has not brought the statement of account from where the amount was disbursed and further that he has paid ₹15 lacs to the petitioner by way of 3 cheques. Thus, complainant-

Davinder Kumar Bansal is required for further examination with a direction to produce the account statement. Similarly, examination of the Bank official is also necessary.

3. Learned counsel for the petitioner further contends that further examination of the aforesaid witnesses, who have been sought to be re-called by way of an application under Section 311/391 Cr.P.C., would certainly help ld. appellate court for arriving at a just conclusion and to impart justice to the parties. Thus, the impugned order being absolutely against the settled canons of law is liable to be set aside, especially, in the circumstances that an application for additional evidence or for recalling of witness(s) can be filed at any stage i.e. including the appellate stage.

4. This Court has given an anxious thought to the submissions made by learned counsel for the petitioner but find the same to be without any legal substance.

5. Undisputably, when complainant-Davinder Kumar Bansal was cross-examined by the petitioner before the ld. Magistrate, he did not opt either to move an application for recalling him for his further cross-examination or to request the court to adjourn the case for further examination. However, during the pendency of appeal before the ld. Additional Sessions Judge, Chandigarh, an application under Section 311/391 Cr.P.C. was moved, which has been rightly dismissed by the ld. trial court, especially, in view of the fact that the petitioner has admitted his signatures on the cheques in question. And from this fact, it can be safely inferred that the cheques have been issued by the petitioner for pre-existing liability towards the complainant. Not only this, the petitioner has also admitted his liability while entering into a compromise with complainant-

respondent No.1.

6. In pursuance of compromise, the petitioner issued 3 cheques, out of which, 2 cheques were presented for payment but those were dishonoured and returned back with remarks "*funds insufficient*". Entering into compromise with complainant-respondent No.1 and issuance of cheques, which have been subsequently dishonoured, are also suggestive of the fact that the instant application is nothing but has been moved by the petitioner just to fill-up the lacuna as well as to delay the disposal of the appeal.

7. Impugned order being absolutely inconsonance with the law does not require any interference by this Court.

8. Accordingly, the instant petition is dismissed.

July 08, 2016
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(JASPAL SINGH)
JUDGE