

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

CRR No.3323 of 2016.
Decided on:-15..09.2016.

Sandeep Kumar.

.....Petitioner.

Versus

Sobh Ram.

.....Respondent.

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

Present:- Mr. Pawan Kumar Hooda, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present revision petition impugning the order dated 30.8.2016 passed by learned Additional Sessions Judge, Panipat whereby application moved by the petitioner-accused seeking additional evidence was dismissed.

Briefly stated, the respondent-complainant has filed a complaint under Section 138/142 of the Negotiable Instruments Act, 1881 (for short, the Act) against the petitioner with the averments that they had friendly relations with each other. The petitioner borrowed a sum of Rs.18 lacs from the respondent-complainant for purchase of a plot and to raise construction on it. The petitioner had assured to return this amount within three months. In order to liquidate his liability, the petitioner has issued two cheques bearing No.372163 and 372164 both dated 11.9.2009 amounting to Rs.9 lacs each. However, when the respondent-complainant presented the said

cheques for encashment, the same were returned by the banker of the petitioner with the memo "account closed". The said complaint was finally decided leading to conviction and sentence of the petitioner for offence under Section 138 of the Act vide judgment dated 16.8.2013 and order of sentence dated 17.8.2013 passed by learned Judicial Magistrate 1st Class, Panipat.

Against the aforesaid judgment of conviction and order of sentence, the petitioner preferred an appeal before the Court of Session, Panipat which is now pending before learned Additional Sessions Judge, Panipat. During the pendency of said appeal, the petitioner has moved an application seeking additional evidence on the ground that the petitioner could not place on record the legal notice dated 28.1.2010 issued from the office of Mr. Randeep Singh Ghangas, Advocate because the said notice was received by family member of the petitioner and not by the petitioner himself. This fact of receipt of notice was never disclosed to the petitioner by the family members and it was only on 25.7.2014 when the petitioner was searching some revenue records of his agriculture land, he found copy of the legal notice dated 28.1.2010.

Learned counsel for the petitioner has contended that the legal notice dated 28.1.2010 sent by the respondent-complainant through his counsel is very necessary and for which additional evidence needs to be allowed. The application moved by the petitioner before learned appellate Court has wrongly been dismissed without appreciating the evidence.

Moreover, the fact of issuance of legal notice was admitted by the respondent in his reply. He has further contended that the learned appellate Court has failed to appreciate that there is no intention on the part of the petitioner to delay the proceedings in any manner. Section 391 Cr.PC provides that the appellate Court may take further evidence in the appeal pending before it. In case the additional evidence sought by the petitioner is not taken on record, it will cause a great prejudice to him and he will suffer an irreparable loss.

I have heard learned counsel for the petitioner.

The petitioner has sought to lead additional evidence and to place on record legal notice dated 28.1.2010. The said notice pertains to loan amount of Rs.30 lacs obtained by the petitioner from the respondent-complainant. The cheques were issued by the petitioner to repay the said loan. The legal notice does not pertain to the transaction which is subject matter of the complaint under Section 138 of the Act and, therefore, the said notice has no relevance with the controversy involved in the pending appeal. The legal notice was issued on 28.1.2010, whereas the complaint was filed on 28.4.2010 and in this manner, the legal notice was issued before filing of the complaint and the same was not produced even before learned Magistrate during the trial.

When the legal notice dated 28.1.2010, which is sought to be produced as additional evidence is not relevant in the present controversy, filing of the application under Section 391 Cr.PC for additional evidence

becomes irrelevant. Therefore, this Court does not find any merit in the present revision petition and the same is, accordingly, dismissed.

September 15, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No