IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 24.04.2017

1. **CRM-M-10521-2015(O&M)**

RAVI KIRAN SINGH ......Petitioner

Versus

AMARDEEP SINGH ... Respondent

2. **CRM-M-10759-2015 (O&M)**

RAVI KIRAN SINGH ......Petitioner

Versus

GURINDER SINGH ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms Rakhi Sharma, Advocate
for the petitioner.

Mr. Kamal K. Chaudhary, Advocate
for the respondent.

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<u>RAJ MOHAN SINGH, J.(ORAL)</u>

[1]. Vide this common order, CRM-M No.10521 of 2015 titled Ravi Kiran Singh Vs. Amardeep Singh and CRM-M No.10759 of 2015 titled Ravi Kiran Singh Vs. Gurinder Singh are being disposed of.

[2]. Facts are being taken from CRM-M No.10521 of 2015.

[3]. Complainant-Amardeep Singh filed a complaint under Section 138 of Negotiable Instruments Act, in which petitioner was summoned. In due course, after adducing evidence, the

petitioner filed an application under Section 311 Cr.P.C for examining the witness. The application was moved in order to establish business relationship between the petitioner and the complainant in the context of running joint business in the premises of SCO 3033-34, Sector 22-D, Chandigarh, which was owned by Sarita Vij. Two cheques bearing Nos.257421 and 257429 were issued from the saving account of the petitioner with Canara Bank, Sector 44-C, Chandigarh towards rent paid to the aforesaid land lady Sarita Vij. Even a lease deed was executed by land lady in favour of the complainant. Petitioner in his statement under Section 313 Cr.P.C has taken a stand that in the year 2007, after leaving the job from the bank, the accused/petitioner joined the office of the complainant in the aforesaid premises for doing the business of property dealing, in which complainant was already involved. After a gap of 7-8 months, the business of the property dealing could not flourish and therefore, the petitioner decided to leave the business and part ways from the complainant. The petitioner left the office and business of the complainant, but he forgot to collect his cheque book, which was lying in the drawer of the office. The cheque book was containing signed cheques, but no amount was filled. The said cheques were used by the complainant. The petitioner has taken a specific stand that the cheques were never issued by the petitioner to the complainant and the same were claimed to be false and fabricated. The petitioner has denied his involvement in any business of immigration, nor any amount was paid to him by the complainant.

[4]. Judicial Magistrate First Class Chandigarh has declined the prayer by observing that the leafs of the cheques forming part of a cheque book have no expiry date and therefore, any of the leaf can be utilized by the drawer as per convenience at any point of time. Merely because other cheques from the same cheque book were utilized in the year 2007 itself, the same does not provide any such proof vide which presumption in terms of Section 118 of the Negotiable Instruments Act can be rebutted.

[5]. I have heard learned counsel for the parties.

[6]. The object underlying provision in terms of Section 311 Cr.P.C is to prevent failure of justice on account of mistake of either of the party to the litigation. It is a settled principle of law that the Court at any point of time of inquiry, trial or proceeding can summon any person as witness or examine any person in attendance though not summoned as witness or recall and re-examine any person already examined if in the opinion of the Court such evidence is just and appropriate for decision of the case. Under Section 311 Cr.PC, the Court has ample powers to summon any person as a witness at any stage.

[7]. By way of filing the application in question, the petitioner intended to establish business relationship between the parties so as to establish the access made by the complainant to the cheque book, which was allegedly lying in the drawer of the office.

[8]. In ***Hanuman Ram Vs. State of Rajasthan and others, AIR 2009 SC 69***, the underlying principles were explained and it was held that in order to prevent abuse of process of law, mistake if any of either of the party, can be set at right by way of allowing the parties to bring on record valuable evidence or leaving an ambiguity in the statements of witnesses. It is not only the prerogative of the Court, but also a duty to examine such a witness as it considers necessary for doing justice between the parties. Court becomes functus officio only after passing of final verdict.

[9]. The Court can adopt latitude and liberal view in the interest of justice, particularly when the Court has unbridled powers under Section 311 Cr.P.C, but the same has to be exercised in a judicious manner. In ***Hoffman Andreas Vs. Inspect of Customs, Amritsar (2000) 10 SCC 430,*** the Apex Court after assessing the necessary parameters held that the aforesaid principles are to be adopted in order to visualize the object of a fair trial.

[10]. In my view, the additional evidence which is sought to be adduced is *prima facie* necessary to establish business relationship between the parties so as to demonstrate that the complainant was in a position to have an access to the cheques lying in the drawer. The ultimate evidentiary value of the evidence likely to be produced would be gone into by the trial Court itself at the relevant time. In my considered opinion, indulgence can be granted to the petitioner in terms of Section 311 Cr.P.C at this stage by allowing him to lead evidence by way of summoning the witness/official of Canara Bank, Sector 44-C, Chandigarh in the defence evidence.

[11]. With the aforesaid observations, these petitions are allowed. However, nothing observed hereinabove shall be taken to be an opinion of fact on merits of the case. The trial Court would decide the case on merits in accordance with law.

(RAJ MOHAN SINGH)
JUDGE

24.04.2017
prince

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**