

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

**Crl. Misc. No.M-25764 of 2015 (O&M)
Date of Decision: January 10, 2017**

Mahesh Sharma

.....PETITIONER(s).

VERSUS

Dinesh Bhardwaj

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. M.K. Sood, Advocate
for the petitioner (s).

Mr. Vikas Chaudhary, Advocate
for the respondent.

SURINDER GUPTA, J.

Mahesh Sharma petitioner filed complaint under Section 138 and 142 of Negotiable Instruments Act, 1881 against the respondent which is pending trial before Judicial Magistrate, Fatehabad. During the pendency of that complaint, he moved an application for permission to examine Rajesh Bansal son of Rameshwar Dayal as witness to prove that he has sold a plot to him for ₹10 lacs, which was dismissed.

Learned counsel for the petitioner has argued that the aforesaid witness was sought to be examined to meet the objection raised by the respondent that the petitioner did not have capacity to advance loan of ₹10 lacs for which he issued cheques. The evidence sought to be

produced is material evidence but the trial Court committed grave error while commenting on the merits of the evidence sought to be produced and declining the permission to produce the witness.

Learned counsel for the respondent has argued that the application was moved by petitioner only to fill up the lacuna which cannot be allowed. He has further argued that the petition under Section 482 Code of Criminal Procedure (for short 'Cr.P.C.') against the order declining the permission to lead additional evidence, is not maintainable and has relied on the decision of Co-ordinate Bench of this Court in case of ***Uppal Credit and Investment Pvt. Ltd. Vs. Ashwani Kumar 2016(2) R.C.R. (Criminal) 684.***

At this stage, learned counsel for the petitioner has argued that though the revision is maintainable against the impugned order, this court may treat this petition as revision petition as the parties have already spent more than 16 months and the proceedings before the trial court, which have been stayed, are being unnecessarily delayed.

A similar question cropped up in case of ***Jagir Singh Sidhu Vs. Harbeant Singh 2003(3) RCR (Criminal) 631*** and a Co-ordinate Bench of this Court, observed therein as follows:-

“7. First of all the preliminary objection of the respondent with regard to the revision petition being barred against an interlocutory order may be considered. In this regard it may be noticed that the petitioner initially filed Criminal Revision Petition No. 830 of 2001. This Court vide order dated 25.5.2001, on the oral request of the learned counsel

for the petitioner treated the said Criminal Revision Petition as a petition under Section 482 of the Cr.P.C. This petition was accordingly numbered as Criminal Misc. No. 21347-M of 2001. Therefore, the present is a Criminal Misc. Petition under Section 482 of the Cr.P.C. This Court in exercise of its inherent powers under Section 482 Cr.P.C. can interfere with an order which leads to mis-carriage of justice. The Hon'ble Supreme Court in the case of Krishnan v. Krishnaveni, 1997(1) RCR(Criminal) 724 (SC) : AIR 1997 Supreme Court 987 has held that there is paramount power of continuous superintendence of the High Court under Section 483 of the Cr.P.C. over the Courts of Judicial Magistrate subordinate to it to examine the correctness, legality, or propriety of any order passed. The High Court may refuse to exercise its jurisdiction on the basis of self-imposed restrictions. However, it is well known that for securing the ends of justice, the High Court can interfere with an order which causes miscarriage of justice or where the order is palpably illegal or unjustified. In this view of the matter, I am unable to agree with the contention of the learned counsel for the respondent that the petition is liable to be dismissed on the sole ground that it is against an interlocutory order and is barred by the provisions of Section 397(2) of the Cr.P.C.”

Despite the fact that the petitioner can be directed to avail the remedy of filing revision, I deem it appropriate to treat this petition as a revision petition and to decide the same on merits instead of referring the parties to go to the court of Sessions with direction to file revision

petition there.

Admittedly, the trial Court proceeded with summary trial of the complaint after summoning the respondent. Petitioner was called for further cross-examination and a question was put to him regarding his capacity of advancing the loan.

In summary trial, the procedure specified in Code of Criminal Procedure for trial of summary cases is to be followed. Section 262 Cr.P.C., which deals with summary trial, reads as follows:-

“262.Procedure for summary trials.- (1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

Section 254 Cr.P.C. requires the trial Court to 'take all such evidence as may be produced in support of the prosecution'. Section 145 (2) Negotiable Instruments Act, 1881 lays down that 'the trial Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein'.

Under the above provisions, petitioner (complainant) is competent to examine a witness who is material to prove his plea/allegation in complaint, while deciding his application. The trial Court instead of seeing the relevance of the evidence sought to be produced by the petitioner, commented on the merits of the evidence sought to be produced by observing that 'it is not probable to believe that

“amount of 10 lacs was advanced after selling his plot” by the complainant'.

It is evident that evidence sought to be produced by the petitioner is material piece of evidence and would help the trial Court to analyse the plea raised by the respondent that complainant was not having capacity to advance loan of ₹10 lacs to him.

As a sequel of my above discussion, I find merits in this petition. The same is allowed. Impugned order dated 24.04.2015 is not legally sustainable, unjustified and has resulted in miscarriage of justice, hence, set aside. The application of the petitioner seeking permission to examine Mr. Rajesh Bansal is allowed. Trial Court will allow opportunity to the petitioner to examine the aforesaid witness and proceed further with the complaint, in accordance with law.

January 10, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***