

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

CRM No.M-26120 of 2015 (O&M)

Date of Decision: May 08, 2017

M/s Akash Steel

...Petitioner

VERSUS

Ravinder Kumar

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Som Nath Saini, Advocate
for the petitioner.

None for the respondent.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 15.05.2014 passed by learned Judicial Magistrate Ist Class, Sonapat, whereby the application filed by the petitioner under Section 311 Cr.P.C. was dismissed and judgment dated 20.07.2015 passed by learned Addl. Sessions Judge, Sonapat, vide which the revision filed by the petitioner was dismissed.

Notice of motion was issued. Earlier, learned counsel for the respondent appeared but today, none appeared on behalf of the respondent.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that a complaint was filed by the present petitioner through his General Power of Attorney Ashok Kumar Saini,

against Ravinder Kumar under Sections 138 and 142 of the Negotiable Instruments Act. During the pendency of the proceedings, an application under Section 311 Cr.P.C. was filed to the effect that Sh.Arun Saini, proprietor of M/s Akash Steel was inadvertently not examined during the evidence of complainant. That application was resisted by the accused on the ground that it is not the stage to move application when arguments have been concluded and present move of complainant is just to fulfill the lacuna left and nothing more.

Learned JMIC, Sonapat, vide impugned order dated 15.05.2014 dismissed the application. A revision was filed by the petitioner and learned Addl. Sessions Judge, Sonapat, dismissed the same vide judgment dated 20.07.2015.

Aggrieved from the above said order and judgment, present petition has been filed.

From the record, I find that a complaint was filed by M/s Akash Steel through its sole proprietor Arun Saini through GPA Ashok Kumar Saini. It is argued that as the complaint was filed through Attorney and Attorney has been examined, therefore, it cannot be held that the owner has been left due to inadvertence. There is lacuna in this case and to fill that lacuna, the application under Section 311 Cr.P.C. has been filed after the arguments.

Learned Magistrate relied upon the law laid down by the Hon'ble Supreme Court in ***Rajender Parshad vs. Narkotik Steel, 1999(6) SCC 110*** and dismissed the application by stating that it amounts to filling up of lacuna.

15.05.2014 shows that it has been passed as per law and no illegality has been committed by the learned Court below while passing the impugned order. In no way, the passing of the impugned order and judgment can be held as illegal or amount to miscarriage of justice. The petitioner itself filed the complaint through Attorney and it was pursued by the Attorney. The filing of application under Section 311 Cr.P.C. is nothing but has been filed to fill up the lacuna in this case. Furthermore, if this application is allowed and the complainant is allowed to fill up the lacuna, then it will cause prejudice to the case of the accused.

In view of the above discussion, I find that the impugned order and judgment passed by both the Courts below, are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

May 08, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No