

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

CRM No.M-29144 of 2017 (O&M)

Date of Decision: December 18, 2017

Sant Ram

...Petitioner

VERSUS

Satpal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Puneet Singla, Advocate
for the petitioner.

Respondent-in-person.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent Satpal for quashing the order dated 20.07.2017 passed by learned Judicial Magistrate Ist Class, Khanna, in complaint No.NACT/271/2015 registered on 12.08.2015, whereby the application under Section 311 Cr.P.C. filed by the petitioner for leading additional evidence and his re-examination was dismissed.

Notice of motion was issued. Respondent appeared in-person and contested the petition.

I have heard learned counsel for the petitioner as well as respondent in-person and have gone through the record.

From the record, I find that during the trial of the complaint

under Section 138 of the Negotiable Instruments Act, the complainant filed

an application under Section 311 Cr.P.C. for leading additional evidence and allowing his re-examination. The brief averments of the application as noted down in the impugned order by learned JMIC, Khanna, are as under:-

“2. Brief facts of the application are that the accused in order to repay the loan amount issued cheque in question which was dishonoured for want of funds in the account of the accused. The complainant is a layman and told his counsel that the accused obtained loan of Rs.10,00,000/- from the complainant and in lieu of that, he issued a receipt of loan amount of Rs.10,00,000/-. The said receipt was issued by the accused in his own handwriting and date was also put by him in his own hands. For the reasons best known to the earlier counsel, the said receipt was not produced in the Court and even the date of advancement of loan was wrongly mentioned in the complaint. Thereafter, complainant changed his counsel and showed him all the papers including original receipt and copy of complaint. Prior to this, the complainant was not in knowledge of the wrong date of loan in the complaint and even the complaint was filed without signatures of the complainant and same was (2) got signed later on after taking permission from the Hon'ble Court. It is further averred that in the last week of December 2016, the accused approached the complainant along with Krishan Murari and admitted that he is to repay the loan amount to the complainant and he issued the cheque for Rs.10,00,000/- and he himself filled in the cheque in his own handwriting and date was already written as 09.10.2016. Complainant asked the accused as to why he has written the date as 09.10.2016 to which accused replied that he has mentioned the said date as mentioned in the receipt. The complainant again believed the accused and received the cheque. So, now new facts have also come into existence and accused himself admitted his liability and as such to prove subsequent events and facts, it is very much necessary to re-examine the complainant. By way of present application, the complainant wants to lead additional evidence to prove and produced the original receipt as well as original cheque bearing date 09.10.2016. Lastly, a prayer for allowing the present application has been made.

Learned Magistrate, after hearing the parties, dismissed the application vide impugned order dated 20.07.2017.

I have gone through the impugned order passed by learned

dismissing the application. As per the order, the complainant has already closed the evidence and statement of accused under Section 313 Cr.P.C. has already been recorded. Even, the accused has led some defence evidence.

At this stage, the complainant filed the application to fill up the lacuna in the case by praying for his re-examination. The complainant also wants the date of advancement of loan to be changed and further wants to produce the alleged receipt which was in the knowledge of the complainant when he produced the evidence. If this evidence is allowed at this stage, it will amount to *de novo* trial. This application, is nothing, but has been filed to fill up the lacuna in the case. The additional evidence which the complainant-petitioner wants to produce before the Court now, was well within his knowledge. The complainant, at the time of giving his evidence, is supposed to be in the knowledge of the date on which he advanced the loan to the accused and at that time, he was also knowing that receipt was given by the accused to him.

In view of the above discussion, I find that the impugned order dated 20.07.2017 passed by learned JMIC, Khanna, is correct, as per law and does not require any interference from this Court.

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

December 18, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No