

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-477-2015 (O&M)
Date of decision: 02.11.2017

Vinod Ghai

....Petitioner

Versus

Madan Lal Aggarwal

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. V.M. Gupta, Advocate
for the petitioner.

Mr. Pankaj Bali, Advocate
for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for quashing the order dated 08.09.2014 passed by the trial Court vide which the application filed by the petitioner-accused under Section 145 (2) of the Negotiable Instruments Act ('the Act' for short) was dismissed.

At the very outset, it may be noticed that this petition was filed in the year 2015 and the proceedings before the trial Court were stayed on 08.01.2015. In the intervening period, the respondent-complainant expired and learned counsel appearing for the respondent-complainant submitted that his son has already moved an application before the trial Court for impleading him as legal heir.

Counsel for the petitioner submits that the trial Court, while

dismissing the application vide order dated 08.09.2014, has made certain observations with regard to the merits of the case, which were not required for the purpose of deciding the application. It is further submitted that the right to cross-examine is important right given to an accused to put up his defence to the prosecution witnesses and therefore, the trial Court has wrongly dismissed the prayer for cross-examination of the complainant's witnesses. Counsel for the petitioner further submitted that another prayer made in the application under Section 145 (2) of the Act was to allow him to lead defence evidence, which has also been deemed to be dismissed in view of the observations made in the impugned order.

Counsel for the petitioner has relied upon **Indian Bank Association and others Vs. Union of India and others, 2014 (2) RCR (Criminal) 598** wherein the Hon'ble Supreme Court has held as under: -

“We have indicated that under Section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the Court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. Affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post summoning stage. In other words, there is no necessity to recall and re-examine the complaint after summoning of accused, unless the Magistrate

passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of the Act suo moto by the Court. In summary trial, after the accused is summoned, his plea is to be recorded under Section 263(g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the Court under Section 263(h) Cr.P.C. and the same procedure can be followed by a Magistrate for offence of dishonour of cheque since offence under Section 138 of the Act is a document based offence. We make it clear that if the proviso (a), (b) & (c) to Section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences.”

On the other hand, learned counsel for the respondent-complainant submits that he has no objection if the petitioner-accused may be granted opportunity to cross-examine the witnesses produced by the complainant or the petitioner-accused is permitted to lead his defence evidence.

Accordingly, the impugned order dated 08.09.2014 is hereby set aside. Petitioner-accused is allowed to cross-examine the witnesses of respondent-complainant and on conclusion of the prosecution evidence, the trial Court will also give an opportunity to the petitioner to lead his defence evidence.

Petition is disposed of.

Since the matter pertains to the year 2015 and proceedings were stayed, trial Court is directed to dispose of the complaint expeditiously preferably within a period of six months.

Parties are directed to appear before the trial Court on 14.11.2017.

02.11.2017
vishnu

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No