

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No. M-5133 of 2017 (O&M)

Date of Decision: 16.02.2017

Sushil Kumar

... Petitioner

Versus

Piara Singh

... Respondent

CRM No. M-4794 of 2017 (O&M)

Sushil Kumar

... Petitioner

Versus

Paramjeet Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Kiran Kumar, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.

This order shall dispose of these two connected petitions i.e. CRM No.M-5133 of 2017 (Sushil Kumar Vs. Piara Singh) and CRM No.M-4794 of 2017 (Sushil Kumar Vs. Paramjeet Singh @ Paramjeet Singh Garcha) filed under Section 482 Cr.P.C. seeking quashing of orders carrying even date i.e. 01.12.2016 in terms of which applications moved by the petitioner herein, namely, Sushil Kumar under Section 311 Cr.P.C. before the trial Court in proceedings under Section 138 of the Negotiable Instruments Act for recalling of witness RW-2 Harpal Singh for further examination/re-examination have been dismissed.

The complainant/respondents herein are father and son. Accused/petitioner in both these cases is Sushil Kumar. Criminal complaint under Section 138 of the Negotiable Instruments Act bearing No.63/2/15 was lodged by Piara Singh son of Amar Singh (respondent No.2 in CRM

No.M-5133 of 2017) and against Sushil Kumar petitioner for dishonour of a cheque of Rs.19,21,800/- dated 07.04.2015 drawn on Oriental Bank of Commerce, Phillaur. Criminal complaint under Section 138 of the Negotiable Instruments Act bearing No.62/2/15 was lodged by Paramjeet Singh @ Paramjeet Singh Garcha son of Piara Singh against Sushil Kumar on account of dishonour of a cheque for an amount of Rs.8,23,600/- dated 04.04.2015 drawn on Oriental Bank of Commerce, Phillaur.

In both these proceedings, accused Sushil Kumar (present petitioner) had preferred applications under Section 311 Cr.P.C. for recalling of witness RW-2 Harpal Singh for further examination/re-examination. These applications have been dismissed by the trial Court vide two separate orders carrying even date i.e. 01.12.2016.

The factual matrix obtaining in both these petitions is identical. Even the prayer made in the applications filed by the accused Sushil Kumar under Section 311 Cr.P.C. was identical. The impugned orders dated 01.12.2016 dismissing the application under Section 311 Cr.P.C. are identically worded. Accordingly, both the petitions have been heard together and are being disposed of by a common order.

Counsel for the petitioner has been heard at length and pleadings on record have been perused.

It is the case of the petitioner/accused himself that he had examined one Harpal Singh, Mandi Supervisor-cum-Accountant, Market Committee, New Grain Market, Phillaur as RW-2 on 23.02.2016. Said witness was cross-examined by counsel for the complainants on the same very day.

Sushil Kumar moved an application under Section 311 Cr.P.C.

for recalling of Harpal Singh RW-2. The application dated 31.03.2016 under Section 311 Cr.P.C. has been appended as Annexure P-3 along with CRM No.M-5133 of 2017.

Perusal of the same reveals the basis put forth by the accused to summon RW-2 Harpal Singh for re-examination. As per contents of the application, the accused seeks to elicit information as to whether the complainants Piara Singh and Paramjeet Singh who are father and son, ever sold any of their crops/harvest through the firm of which the accused was a proprietor. RW-2 Harpal Singh was also sought to be summoned for re-examination to disclose details about the different grain markets falling under the jurisdiction of Market Committee, Phillaur as also the extent of operations and working of the firm of which the accused was a proprietor.

Identical application and on the same very basis was filed under Section 311 Cr.P.C. even pertaining to the connected matters i.e. in the complaint under Section 138 of the Negotiable Instruments Act filed by Paramjeet Singh son of Piara Singh.

Both these applications stand dismissed by the trial Court.

This Court has even perused the complaints filed by the complainants Parmajeet Singh and Piara Singh under Section 138 of the Negotiable Instruments Act. The complaints have been appended and placed on record at Annexure P-1 in these two connected petitions. As per complainants, both are NRIs. They have land situated at Village Jajja Khurd in Tehsil Phillaur. In the complaint, it was asserted that the accused Sushil Kumar was known to them since many years as he had also acted as their commission agent. Complainants had asserted that the accused Sushil Kumar used to borrow amount from the complainants for his business needs

on interest @ 1.5% per annum. It is towards discharge of such legally enforceable debt that the cheques in question had been issued to the complainants and which upon presentation had been dishonoured.

During the course of examination, counsel would concede that RW-2 Harpal Singh had been examined in chief at length. Thereafter, he was cross-examined by counsel appearing for the complainants. It is at such stage that the application had been moved under Section 311 Cr.P.C. seeking to summon RW-2 Harpal Singh for further examination/re-examination.

The principles governing the exercise of power under Section 311 Cr.P.C. are by now well settled. If the evidence of any witness appears to the Court to be essential for the just decision of a case then there would be no fetters on the power of the Court to summon and examine or recall and re-examination any such person. The object for exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding of the truth. However, such wide discretionary power is to be exercised judiciously and not arbitrarily.

The accused has already availed the opportunity of having examined his defence witness i.e. RW-2 Harpal Singh at length. Such witness already stands cross-examined by counsel appearing for the complainants. Under such circumstances, the applications moved by the petitioner Sushil Kumar/accused under Section 311 Cr.P.C. to summon RW-2 Harpal Singh for further examination/re-examination would be construed as an exercise to fill up the lacuna. It would also be seen as an attempt by the accused party to prolong and to cause delay in the trial proceedings.

In an overview of the matter, this Court does not find it to be a fit case calling for intervention and to interfere with the impugned orders dated carrying even date i.e. 01.12.2016 passed in both these connected matters.

Both the petitions are, accordingly, dismissed.

16.02.2017

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No