

CRM-M-30598-2017 (O&M)

Date of decision: 17.01.2018.

Harkewal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Vikas Sharma, Advocate
for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 15.05.2017 (Annexure P-3) passed by the trial Court in criminal complaint No. 101, dated 01.03.2016 vide which, the application filed by the petitioner-accused for further cross-examination of the complainant has been dismissed.

Brief facts of the case are that the respondent has filed the complaint under Section 138 of the Negotiable Instruments Act with the allegations that the complainant has advanced a loan of Rs.90,000/- to the petitioner and in lieu thereof, he had issued a cheque dated 31.03.2015 for Rs.90,000/-. It is further stated in the complaint that on presentation of the cheque, the bank dishonoured the same on 19.05.2015 and thereafter, the complainant issued a legal notice and filed a complaint under Section 138 of the Negotiable Instruments Act. The complainant, appeared as CW-1 and submitted his affidavit as Annexure Ex.CW1/A along with certain other documents and closed his preliminary evidence. Thereafter, the petitioner was summoned and in the after charge evidence, the complainant again

appeared as CW-1 for cross-examination and his cross-examination was conducted by the petitioner on 23.01.2017. Thereafter, evidence of the complainant was closed and the petitioner filed an application for further cross-examination of the complainant on the ground the petitioner has taken a defence that he has repaid the amount to the complainant but he could not produce the receipts which he had traced after conclusion of the cross-examination of the complainant. It is further stated in the application that the evidence of the complainant was closed on 24.03.2017 and only thereafter, the receipts were produced as these were located by the petitioner/accused and he wants to further cross-examine the complainant by putting the receipts regarding the payment to the complainant. Counsel for the petitioner further submitted that the further cross-examination of the complainant is necessary as he has set up a defence which can be proved by producing those receipts during the cross-examination of the complainant.

The trial Court, vide impugned order dated 15.05.2017, has dismissed the application on the ground that the petitioner has never produced any such receipts and the same were never put to the complainant during his cross-examination.

Learned counsel for the petitioner further submitted that though, the complainant was cross-examined at length, however, the receipts which have been traced subsequently, hence, possibly, these could not be put to the complainant, when he was cross-examined. It is further submitted that the receipts are relevant documents of the case to prove that the petitioner-accused has no existing legal liability and it proves valid defence set up by the petitioner.

Despite notice, no one has put in appearance on behalf of respondent No.2 and, therefore, there is no opposition with the present petition.

After hearing counsel for the petitioner, I find merit in the present petition. As the petitioner, has set up a case that he could not locate the receipts earlier and has moved an application for further cross-examination, after he was able to trace the receipts of repayment of amount, the present petition is allowed. The trial Court is directed to grant one effective opportunity to the petitioner-accused for further cross-examination of the respondent/complainant.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

17.01.2018
Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No