

In the High Court of Punjab and Haryana at Chandigarh

CRM No.M-38234 of 2016

Date of Decision:- 3.7.2018

Koushalander Gupta and another

... Petitioners

Versus

Deepak Goel

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Gaurav Jindal, Advocate
for the petitioner.

Ms. Amrita Nagpal, Advocate
for the respondent.

GURVINDER SINGH GILL J.

The petitioner assails order dated 12.9.2016 passed by learned JMIC, Panipat whereby an application filed by the petitioner/accused for production of the following documents has been declined :-

- (i) Copy of partnership deed of the firm.
- (ii) Income Tax Return for the year 2012-13 and 2013-14.
- (iii) Bank statement of the complainant and the firm.
- (iv) Balance sheet for the year 2012-13 and 2013-14 of the firm.
- (v) PAN no. of the complainant.

The learned counsel for the petitioner, while assailing the impugned order, submitted that the aforesaid documents are in possession of the respondent-complainant and that the production of the said documents is of utmost importance so as to rebut the presumption in terms of Section 118 of the Indian Evidence Act, 1872 and Section 139 of the Negotiable Instruments Act, 1881.

I have heard learned counsel for the petitioner and have gone through the impugned order as well as the documents annexed with the petition.

The present case arises out of a complaint filed by the respondent-complainant under Section 138 of the Negotiable Instruments Act in respect of dishonour of a cheque for an amount of ₹ 25 lacs. Needless to mention, the complainant in order to be successful in his complaint under Section 138 of Negotiable Instruments Act would be required to establish that the cheque in question had been signed and issued by the accused and also that the same had been issued in discharge of some legal liability. The documents sought to be produced cannot be said to be materially help the accused in any manner. Rather the said documents would be such which could be required by the complainant to advance his case. It is the complainant who is the master of his case and he cannot be forced to bring on record the documents which he does not intend to.

The learned counsel for the petitioner presses into service a judgment of Hon'ble Supreme Court reported as 2014(1) SCC (Cri) 791 – John K.Abraham vs. Simon C. Abraham and another.

I have gone through the cited judgment. Though in the cited case, the accused was acquitted *inter-alia* on the ground that the complainant could not establish sources of payment of amount to accused, but the ratio of the said judgment is certainly not to the effect that complainant can be compelled to produce documents at the instance of accused.

It will not be out of place to mention that another identical complaint had been filed by Balaji Trading Company against the present

petitioner in which the petitioner filed an identical application before the trial Court which was disposed of on the same day i.e. on 12.9.2016 by the learned JMIC, Panipat and the petitioner had challenged the said order by way of filing Criminal Miscellaneous bearing CRM-M No.35821 of 2016 titled as Koushlander vs. M/s Balaji Trading Company, but the same was dismissed by a Coordinate Bench of this Court vide order dated 4.10.2017.

As such, I do not find any infirmity in the impugned order and the same is hereby affirmed. There is no merit in the petition and the same is hereby dismissed.

3.7.2018

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No