

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRM-M-38009-2014 (O&M)

Surjit Singh

..... Petitioner

Versus

Gurcharan Singh

..... Respondent

2. CRM-M-38010-2014 (O&M)

Surjit Singh

..... Petitioner

Versus

Gurcharan Singh

..... Respondent

Date of decision: 30.08.2018

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. HS Dhandi, Advocate for the petitioner(s).

Mr. Bhaskar Sharma, Advocate for
Mr. Ankur Mittal, Advocate for the respondent(s).

RAMENDRA JAIN, J. (ORAL)

Through this common judgment, two above titled petitions are being disposed of, laying challenge to orders dated 26.09.2014 (Annexure P-9) of the Judicial Magistrate Ist Class, Samrala, whereby application filed by respondent under Section 311 Cr.P.C., for examination of Halqa Patwari, to prove jamabandis of his land to show that he had capacity to lend money to the petitioner was allowed. For brevity, the facts are being extracted from CRM-M-38009-2014.

In nutshell, respondent-Gurcharan Singh, filed two separate complaints i.e. Complaint Nos. 20/2 and 19/2 dated 08.03.2007, against the

petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act') and led evidence in affirmative. The petitioner also led evidence in his defence. At the fag end of trial, respondent-complainant moved separate applications under Section 311 Cr.P.C. for examination of Halqa Patwari, to prove title of his agricultural land through jamabandis to show his capacity to advance loan to the petitioner, which after contest have been allowed by the trial Court vide impugned order Annexure P-9.

Learned counsel for the petitioner *inter alia* contends that trial Court has failed to appreciate that application under Section 311 Cr.P.C., moved by respondent-complainant at the fag end of trial was not maintainable. The trial Court also failed to note that jamabandis sought to be produced by respondent-complainant were not required for effective adjudication of the core issue involved between the parties. The loan was allegedly advanced to the petitioner in the year 2006, whereas respondent now wanted to prove jamabandis for the subsequent years. Therefore, the same had no relevance.

On the other hand, learned counsel for the respondent vehemently opposing the above submissions of learned counsel for the petitioner, pleaded the legality and validity of the impugned order Annexure P-9.

Having given thoughtful considerations to the rival submissions, this Court finds both petitions completely devoid of merit, for the reasons to follow:

Judicial note of the fact has to be taken that Courts, sometimes, dismiss complaints under Section 138 of the Act, on the ground of non-proving of ability by the complainant to advance loan. Therefore,

efforts of the respondent-complainant to prove his ability to advance loan, is necessarily required for just decision of the case.

More so, complaints of the respondent have to be decided by the trial Court on merit. It is a matter of appreciation as to whether the additional evidence sought to be produced by the respondent-complainant is relevant or not. The petitioner is nobody to abstain the trial Court or respondent-complainant to lead evidence to prove his case to the hilt.

I have carefully gone through the impugned order Annexure P-9 (in both cases) and find no illegality or perversity in the same.

Both the petitions stand dismissed.

August 30, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No