

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-3207-2015

Date of decision : 07.05.2018

Ishu Arora

...Petitioner

Vs.

Dharampal

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN.

Present: Mr. Namit Khurana, Advocate
for the petitioner.

Mr. Munish Mittal, Advocate
for the respondent.

Mr. Naveen Sheoran, DAG, Haryana.

...

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in the application is for setting aside the order dated 22.07.2015 passed by learned Additional Sessions Judge, Yamunanagar dismissing the application filed by the petitioner under Section 311 Cr.P.C. for permission to examine the Manager, Punjab National Bank, Aggarsain Chowk, Jagadhri alongwith record of Account No. 1945000111071192. The prayer in the application is that Account No. 1945000111071192 stand in the name of one Manpreet Arora and is not the joint account of petitioner-Ishu Arora alongwith Manpreet Arora.

Brief facts are that respondent/complainant has filed the complaint under Section 138 of Negotiable Instrument Act (for short 'NIA') against the petitioner with the allegation that cheque bearing no. 564150 dated 25.06.2018 for ₹ 3,50,000/- drawn on Punjab National Bank

was issued by the petitioner in discharge of his legal and existing liability. On presentation with the bank, the cheque in question was dishonoured with remarks, insufficient funds. Trial Court vide its order dated 06.03.2014 convicted the petitioner and vide order dated 06.03.2014, sentenced him to undergo rigorous imprisonment for one year and to pay compensation of ₹ 4,00,000/- in terms of Section 357 (3) of Cr.P.C.

The petitioner filed appeal before lower appellate court and moved the aforesaid application in order to prove that the cheque was issued from the account which was solely in the name of one Manpreet Arora and the petitioner was not joint holder of the cheque and therefore, there was no liability on part of the petitioner towards the said cheque.

Lower Appellate Court vide impugned order dated 22.07.2015 has dismissed the application observing that since it has come in the statement of CW 2-Sushil Kumar Clerk of Punjab National Bank, Model Town, Yamunanagar that account of Ex.CW1/B was in the joint name of petitioner and Manpreet Arora, therefore, there is no need to summon the witness as prayed for in the application.

On 16.01.2018, after hearing the arguments of the parties, the Branch Manager, Punjab National Bank, Aggrsain Chowk, Jagadhri was summoned to bring the original record pertaining to the aforesaid account and furnish an affidavit, if this account is jointly held by the petitioner Ishu Arora with Manpreet Arora or not. On 30.04.2018, Senior Manager, Punjab National Bank, Jagadhri appeared in the Court and stated that infact, account No. 1945000111071192 relates to Punjab National Bank, Indira Market, Jagadhri and the Chief Manager of the said branch was directed to appear before this Court alongwith record.

A certify copy of the original application form of Manpreet Arora for opening the aforesaid account has been placed on record as mark 'X'. It is stated by Mr. Ravinder Mohan, Manager, Punjab National Bank Branch, Indira Market, Jagadhri Yamunanagar that the aforesaid account is solely held by Manpreet Arora. The learned counsel for the respondent could not rebut the aforesaid factual position as stated by the Branch Manager.

It is now well settled principal of law that the application under Section 311 Cr.P.C. or 391 Cr.P.C. can be allowed at any stage as the Court has vide power to do justice and find the truth. In view of the same, impugned order dated 22.07.2015 passed by the Lower Appellate Court dismissing the application filed by the petitioner under Section 311 Cr.P.C. for seeking permission to lead additional evidence to summon the Branch Manager, Punjab National Bank, Aggarsain Chowk is allowed with clarification that since this account pertains to Indira Market Branch and not Aggarsain Chowk branch, the witness from the concerned branch be summoned.

Lower Appellate Court will record the statements of the concerned Branch Manager either itself or may direct the trial Court to record the statement in accordance with law, after granting right of rebuttal to the complainant.

Disposed of.

07.05.2018

Harish Kumar

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No