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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54124-2018 (O&M)
Date of decision-07.12.2018

Milap Chand Thakur @ Milap Singh ThakurPetitioner

Vs.

Shri Jai Chand ...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. C.L.Ghai, Advocate for the applicant-petitioner.

MANOJ BAJAJ, J.

The petitioner has challenged the order dated 14.11.2018 (Annexure P-4) whereby an application moved by him under Section 311 of Code of Criminal Procedure for permission to examine Mahinder Singh as an additional witness has been dismissed.

Learned counsel has conceded that the case is pending for the defence evidence, however, it is argued by Mr. Ghai that this witness is important to prove that the cheque in question was delivered in his presence.

The argument and the reason offered for examination of Mahinder Singh is absolutely misplaced as for that purpose, this witness is not a necessary witness. Mr. Ghai does not dispute that the cheque was dishonoured on account of insufficient funds. Besides, the witness was never shown as a witness in the list of witnesses submitted with the complaint. The trial Court has given valid reasons in the impugned order declining the prayer for examination of Mahinder Singh as an additional witnesses. The

relevant para reads as below:-

“The entire judicial record has been carefully perused. The perusal transpires that complainant made an application for summoning of four witnesses on 03.06.2018 and the same had been allowed. Thereafter, complainant gave up witness Ashok Kumar after examining three witnesses on the ground that he was unnecessary. The second application for summoning of two witnesses was made on 06.09.2018. Again he gave up one witness namely Subhi Singh on 21.09.2018 as he was wrongly mentioned in the list of witnesses dated 06.09.2018 by making his separate statement. The second witness namely Ramesh Chand Rana as per the second list of witness did not come present for his evidence on 21.09.2018 and accordingly the case was fixed for 05.10.2018. On 05.10.2018 again Mr. Ramesh Chand Rana did not appear and on the request of counsel for complainant, case was adjourned for 15.10.2018. Awaiting witness namely, Ramesh Chand Rana on the date fixed, the case was again adjourned to 22.10.2018. On 22.10.2018 Ld. counsel for complainant moved an application for adjournment accompanied with the written request of witness Ramesh Chand Rana to grant another opportunity. The opportunity was granted subject to cost for 26.10.2018. On 26.10.2018 again complainant could not produce the evidence of witness Ramesh Chand Rana inspite of availing sufficient opportunity. Finally, by making his separate statement, he closed his evidence with his own consent after giving up witness namely Ramesh Chand Rana. At the stage of recording of statement of accused under Section 313 Cr.P.C. the instant application has been moved for

additional evidence of witness namely Mahinder Singh son of Devi Parkash r/o Kothi No.96, Ist Floor, Sector-41-A, Chandigarh. The conduct discussed aforesaid does not depicts any inadvertence on the part of complainant that he could not summon Mahinder Singh who is allegedly the witness of sale deed, affidavit, agreement to sell and handing over of the cheque in question. Had, been the necessary witness for the just decision of the case, he could have been summoned by complainant at the earliest or at the time of his evidence. Furthermore, the complainant closed his evidence by making his separate statement and was not got closed by the Court as stated by the complainant/applicant in his complaint.

I have perused the impugned order and find that the same is passed on correct appreciation of the facts and circumstances of the case. The Court has noticed the conduct of the complainant as well as relevance of the witness sought to be summoned. The Court has rightly held that the Mahinder Singh is not a necessary witness, much less to prove the handing over of cheque in question by accused. The power under Section 311 Cr.P.C is discretionary and in view of the above the trial Court has rightly refused to exercise the same.

Consequently, petition stands dismissed.

(MANOJ BAJAJ)
JUDGE

07.12.2018

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No