

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

129

CRM-M No.9742 of 2018
Date of Decision: March 15th, 2018

Madan Lal

...Petitioner

Versus

Rajeev

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Johan Kumar, Advocate
for the petitioner.

AUGUSTINE GEORGE MASI, J. (ORAL)

Petitioner has approached this Court challenging the order dated 15.02.2018 passed by the Judicial Magistrate Ist Class, Faridabad, whereby the second application moved by the petitioner for leading additional evidence stands dismissed.

It is the contention of learned counsel for the petitioner that the petitioner intends to produce one of the witnesses who was cited by the complainant himself but did not produce him as witness, depriving the petitioner an opportunity to cross-examine them. He contends that the petitioner has preferred to file this application for additional evidence in view of the fact that two cheques, which are alleged to have been issued by him, were in fact simply signed by him and handed over to the father of the complainant. Rest of the particulars were filled by the complainant himself and in any case, there is no amount which was due towards the petitioner for which he would have issued these cheques. He further contends that there has been transactions relating to the purchase of property and, therefore, these cheques were issued in pursuance thereto.

This contention of learned counsel for the petitioner cannot be

accepted as the plea, which has now been sought to be taken, was never a

defence of the petitioner in his statement under Section 313 Cr.P.C.

That apart, the assertion of counsel for the petitioner cannot be accepted that he was unable to produce the witnesses, which he now intends to summon as they were cited by the complainant himself but did not produce them, for the simple reason that the evidence, which was led by the complainant, was prior to the petitioner and, therefore, he was very well aware of the witnesses, who have been cited but not summoned.

That apart, the petitioner had earlier also filed an application for additional evidence which was dismissed by the trial Court on 09.09.2015 which according to counsel for the petitioner is pending challenge in this Court by way of *CRM-M No.34749 of 2015* titled as *Madan Lal Versus Rajeev* and now listed for hearing on 09.05.2018 but a perusal of the record of the said petition would show that there is no stay granted by this Court.

That apart, in the light of the fact that the petitioner, in his statement under Section 313 Cr.P.C., has admitted his signatures on the cheque and has taken various pleas in his defence but nothing has come out which would support the present claim on the basis of which additional evidence is being sought to be led by the petitioner. The reasoning assigned by the learned trial Court in order dated 15.02.2018 is based upon proper appreciation of the pleadings and in accordance with law.

The plea of the counsel for the petitioner that the onus is upon the petitioner to discharge his liability with regard to the factum and rebuttal of the presumption raised under Sections 139 and 20 of the Negotiable Instruments Act, cannot be disputed, however, the petitioner has already availed of his opportunities while leading his evidence as discussed

above and his earlier application for leading additional evidence stands dismissed.

That apart, it appears that at this stage when there is no stay granted by this Court in CRM-M 34749 of 2015, the application in question which has been dealt with by the trial Court, was only a ploy to delay the proceedings further and, therefore, the order does not call any interference by this Court.

The present petition, thus stands dismissed.

March 15th, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No