

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision. No.2844 of 2018 (O&M)

Date of Decision: 27.08.2018

Parmod Kumar Gupta

...Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

& Criminal Revision. No.2847 of 2018 (O&M)

Parmod Kumar Gupta

...Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Bikram Chaudhary, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

This order shall dispose of two criminal revision petitions i.e. CRR-2844-2018 and CRR-2847-2018, as common issue is involved in both the revision petitions and the parties to the dispute are also common. However, for brevity, facts are being noticed CRR-2844-2018.

The petitioner has filed the present revision petition against order dated 24.07.2018 passed by Additional Sessions Judge, Faridabad, whereby, the application moved by the petitioner under Section 315 CrPC, seeking permission to produce himself as additional witness, was declined.

Briefly stated, the respondent-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") with the averments that since the petitioner-accused and the respondent-complainant were having friendly relations with each other, the petitioner borrowed an amount of Rs.8,50,000/- from the respondent in the month of November, 2013, with an assurance that he will return the said amount in the month of January, 2014. However, on the stipulated date, when the complainant demanded his money back, the petitioner showed his inability to return the said amount. Accordingly, a panchayat of respectable persons of the society was convened on 01.02.2014, wherein, a written compromise was entered into between the parties. The petitioner admitted his liability to pay an amount of Rs.9,00,000/- i.e. Rs.8,50,000/- as principal amount and Rs.50,000/- as interest amount, to the complainant. In discharge of his liability, the petitioner issued two cheques bearing Nos.000011 and 000012 dated 02.08.2014 for an amount of Rs.1,00,000/- each drawn on Bank of Baroda, 1-2 Chowk, Faridabad in favour of the complainant. However, on presentation of the said cheques in the bank, the same were returned dishonoured with the remarks 'Funds Insufficient' vide bank return memos. dated 05.08.2014. Consequently, the complainant issued a Legal Notice dated 13.08.2014, but since the amount due was not refunded, a complaint was filed against the petitioner.

The plea of the petitioner-accused under Section 263(g) CrPC was recorded, wherein he denied his liability and stated that he had given blank signed cheques to the complainant, as security. He also denied receipt of any Legal Notice after dishonour of the cheques in question. He

did not produce any proof in support of his innocence, which makes it improbable that the cheques in question were not issued in discharge of any legal debt. No evidence was led by the petitioner-accused to show that the cheques in question were misused by the respondent-complainant or that the petitioner had no legally enforceable liability towards the complainant. Thus, the trial Court found that the defence set up by the petitioner-accused was neither definitive nor consistent as far as his innocence is concerned and he has failed to discharge the onus. Accordingly, the trial Court held the petitioner-accused guilty and convicted him for commission of offence under Section 138 of the Act and sentenced him to undergo simple imprisonment for a period of six months and to pay compensation to the tune of Rs.3,00,000/- to the respondent-complainant under Section 143(1)(proviso) of the Act read with Section 357(1)(3) CrPC within a period of two months from the date of passing of the judgment.

Aggrieved against the aforesaid judgment of conviction and order of sentence, petitioner-accused filed an appeal before Additional Sessions Judge, Faridabad.

It is during the pendency of the appeal, the petitioner has moved an application under Section 315 CrPC with a prayer that he wants to appear as a witness to depose the real truth before the Court and also wants to lead evidence to rebut the allegations so made in the criminal complaint, which is a false one.

The respondent-complainant filed reply to the aforesaid application and has taken an objection that filing of the present application is just aimed at delaying the proceedings. The complainant has tendered

document Ex.D-1 on 03.07.2016 to show that the accused was given various opportunities for leading his evidence on 13.07.2016, 22.07.2016, 27.07.2016 and the complainant closed his evidence on 27.07.2016. The trial Court decided the complaint on 27.07.2016, against which, the present appeal was filed on 30.08.2016. The present appeal was adjourned to 10.10.2016, 21.11.2016, 10.01.2017, 10.04.2017, 06.06.2017, 11.08.2017, 09.10.2017, 13.11.2017 and 18.12.2017 (on which date the Court was on leave). Thereafter, on 19.02.2018, the instant application was filed, but the same did not carry any details. Accordingly, the Appellate Court dismissed the application filed under Section 315 CrPC vide order dated 24.07.2018.

Still aggrieved, the petitioner-accused has filed the present revision petition against order dated 24.07.2018.

Learned counsel for the petitioner has argued that the Appellate Court while dismissing the application filed under Section 315 CrPC has not considered the ingredients and provisions of this Section. The provisions of Section 315 CrPC stipulates that the accused is a competent witness for his defence and he may give evidence on oath to disprove the charges so made against him. The petitioner wants to examine himself in order to demolish the case set up by the complainant. He has further submitted that the purpose of examining the accused person under Section 313 CrPC is to meet the requirement of principles of natural justice. Therefore, it has become necessary for the petitioner to avail the benefit of Section 315 CrPC.

I have heard learned counsel for the petitioner and perused the record.

Admittedly, the complaint in question was filed by the respondent-complainant on 11.09.2014 and the same was decided on 27.07.2016. The petitioner was granted ample opportunities to lead evidence in his defence. It is the precise case of the complainant that the petitioner has issued cheques in question in discharge of his liabilities. However, on presentation of the said cheques in the bank, the same were dishonoured on account of 'insufficient funds'. On dishonour of the cheques, the complainant has sent a Legal Notice to the petitioner-accused, calling upon him to honour the cheques, failing which, the complainant filed the instant complaint.

As per the zimni orders dated 07.05.2015, the case was adjourned for 06.07.2015 and thereafter, for 21.07.2015 for defence evidence, but the petitioner has failed to lead any evidence. Therefore, vide order dated 21.07.2015, last opportunity was granted to the petitioner to lead evidence. Thereafter again, case was adjourned to 16.09.2015 and 26.10.2015 for leading defence evidence, but no evidence was led. No DW was present on 02.01.2016, 25.01.2016 and 09.03.2016. Accordingly, last opportunity was again granted to lead evidence on 21.04.2016 and the case was adjourned to 03.05.2016, but even on that date, no evidence was led by the petitioner-accused, despite availing as many as 10 effective opportunities, which included last opportunities as well. Since the petitioner did not lead any evidence, his oral evidence was closed by Court order dated 03.05.2016 and the case was adjourned to 16.05.2016 for documentary evidence. However, on closure of oral evidence after affording ample opportunities to the petitioner, he moved an application

under Section 311 CrPC, which was dismissed on 10.06.2016. The said order dated 10.06.2016 has never been challenged by the petitioner. Thereafter, the case was adjourned to 13.07.2016 for documentary evidence, but no such evidence was led and finally, the trial Court adjudicated the matter on 27.07.2016. Thus, from the very act and conduct of the petitioner and noticing the fact that earlier application filed by the petitioner under Section 311 CrPC was dismissed by the trial Court, the Appellate Court also dismissed the application filed under Section 315 CrPC, with the observations that the object of filing such application is nothing but an attempt to delay the proceedings in one way or the other.

The appeal was preferred by the petitioner on 31.08.2016 and the instant application under Section 315 CrPC was filed by the petitioner after a gap of more than 2 years, which shows that the petitioner is inclined to delay the proceedings in one way or the other.

Therefore, this Court does not find any infirmity in the impugned order dated 24.07.2018 passed by learned Additional Sessions Judge, Faridabad.

Accordingly, the present revision petitions are dismissed.

Photocopy of this order be placed on the file of other connected revision petition.

August 27, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No