

S.No.108

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

CRR No.3953 of 2018 (O&M)

Date of Decision:05.12.2018

Satish Kumar Chauhan

.....Petitioner

Vs.

Dr. Suneet Bajaj

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Arun Singal, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

The challenge in the present petition is to the order dated 18.10.2018 passed by Judicial Magistrate Ist Class , Panipat whereby he has allowed the application filed by the complainant under Section 311 Cr.P.C.; for permission to lead additional evidence.

The brief facts of this case are that the complainant had filed a complaint against the present petitioner alleging therein that there had been regular transactions of friendly loans between the complainant and the present petitioner. Ultimately, when the accounts were re-conciled, an amount of Rs.10,10,000/- was found to be outstanding towards the petitioner. To repay that amount, the petitioner had given a cheque to the complainant. However, on being presented, that cheque had been dishonored by the Bank. As a result, the complaint was filed.

The complainant had led his evidence. In the evidence, he had placed on record photocopy of some writing, alleging that this was executed by the present petitioner, thereby owning the liability to pay the said amount. However, the original of this writing was not brought on record.

Ultimately, the evidence of the complainant was closed, when despite grant

of five opportunities to lead his evidence, the complainant did not complete his evidence. Thereafter, even the statement of the present petitioner/accused under Section 313 Cr.P.C was recorded by the Court. It is at this stage that the application under Section 311 Cr.P.C was moved by the complainant for bringing in evidence the original of the above said writing allegedly executed by the present petitioner. The said application has been allowed. Hence, the present petition has been filed.

Counsel for the petitioner has argued that the complainant was granted more than sufficient opportunities to bring on record any evidence which he want to lead. Despite that, the complainant had not led the said documentary evidence. Although the photostat copy of that document was on record, however, in the statement under Section 313 Cr.P.C, the petitioner has specifically denied existence of any such document and had claimed that it was a forged document. Therefore, there is no justified reason for which the trial Court could have permitted the complainant to lead in evidence the above said writing. It is further contended that the entire attempt of the complainant is to prolong the trial as much as he can; so as to cause maximum harassment to the present petitioner. The complainant is trying to fill up the lacunae in his case; which cannot be permitted at this belated stage when even the defence evidence has been started. In the end, counsel for the petitioner has submitted that even while allowing the application and permitting the complainant to bring on record the said document, the trial Court has not permitted any opportunity to the petitioner to cross-examine the complainant qua the genuineness and originality of the document; which has been permitted to be led in evidence.

To support his contention, counsel for the petitioner has submitted that the complainant had filed another complaint under Section 138 of NI Act as well; against the petitioner. In the said complaint also, the complainant had relied upon the same writing/ document; which has been permitted to be led in evidence now. In that another complaint, the petitioner had put the specific question to the complainant qua the existence of the original of the said document. However, the complainant had denied being in possession of any such document. Therefore, it is a valuable right of the petitioner; to confront the complainant with the relevant factors qua the said document, which has been ignored by the Court below.

Heard the counsel for the petitioner and perused the file. After going through the impugned order, this Court does not find any illegality in the order, so far as it permits the said document to be led in evidence. Section 311 Cr.P.C gives ample discretion to the trial Court to permit the evidence, if in the opinion of the trial Court, the same is relevant and necessary for just decision of the case. It cannot be denied by any means, that the original of the said document, if brought on record and proved in accordance with law, would be necessary for just decision of the case. Hence, the trial Court has rightly permitted the complainant to lead in evidence the original of the said document. Even the stage at which the permission to lead the said evidence is sought; is not that much material.

However, this can also not be denied that if any such evidence is additionally permitted by the trial Court then accused/ the other party also has to be granted a due opportunity to rebut the said evidence and to question the complainant/ party presenting the document; qua the attributes

of such document. This Court finds sufficient substance in the argument of the learned counsel for the petitioner that while passing the impugned order, the petitioner has not been granted any opportunity to cross-examine the complainant qua the validity and the very existence of the original of the said document. This is particularly so, since in other complaint, where the complainant had relied upon the same document, the petitioner claims to have cross-examined the complainant and the petitioner claims that in that cross-examination, the complainant had denied being in possession of any such original document. Otherwise also, right of the accused to cross-examine the complainant or his witness is absolute right. The accused cannot be denied the right to cross-examine the complainant; qua any evidence which is being permitted after the earlier examination of the complainant. Therefore, this Court finds that the petitioner is entitled to at least one opportunity to cross-examine the complainant; after the said document is brought on record by the complainant.

In view of the above, the present petition is partly allowed. The challenge of the petitioner qua the validity of the order passed by the trial Court is rejected. However, it is ordered that the petitioner shall be granted one effective opportunity to cross-examine the complainant; after the complainant has brought on record the alleged original of the document; which has been permitted by the trial Court.

December 05, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No