

**Sr. No.108**

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

**CRR-4800-2018(O&M)**

**Date of decision:17.12.2018**

**Amritpal Singh**

**.....Petitioner**

**versus**

**Rajiv Kumar**

**.....Respondent**

**Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

**Present:** Mr. Saurabh Kapoor, Advocate  
for the petitioner.

**Rajbir Sehrawat, J(Oral)**

This is a petition challenging Order dated 15.10.2018 passed by the Judicial Magistrate Ist Class, Ludhiana vide which the application under Section 311 Cr.P.C moved by the Complainant has been allowed and he has been permitted to prove on record the document alleged to be an agreement between the Complainant and the accused.

A bare perusal of the Order shows that the said document claimed by the Complainant is an evidence of transaction having taken place between the Complainant and the accused, which created a liability against the accused/petitioner. Therefore, the application to prove the same on record and to examine one Puneet Kumar Pathak, who is the marginal witness of an agreement was filed. That application has been allowed by the Trial Court by submitting that the document is already supplied to the present petitioner/accused on a specific application moved by the accused under Section 91 Cr.P.C. The evidence of the Complainant is still going on. Therefore, even if the Complainant is permitted to lead the said evidence, no

prejudice would be caused to the Complainant.

Impugning this Order, learned counsel for the petitioner has submitted that the document, if existing, have already been in possession of the Complainant. Therefore, he should have led in evidence said document and proved the same in accordance with law at an earlier stage. Still further it is contended that the document is not on record, therefore, the complainant can not be permitted to prove the said document on record.

Having heard the learned counsel for the petitioner, this Court does not find any substance in the argument of learned counsel for the petitioner. Needless to say that Section 311 Cr.P.C empowers the Court to permit the evidence at any stage of the case. In this particular case, even the Complainant's evidence has not been completed so far. Therefore, by no means, it can not be said that the Complainant is delayed in making attempt to bring the document on record and to prove the same. Merely because the Complainant has not proved the same at some earlier stage in his own evidence is no ground, for denying the opportunity to the petitioner to lead the same in evidence on some subsequent date during his own evidence. Secondly, argument of learned counsel for the petitioner is that the document is not on record. Therefore, the argument that the same can not be permitted to be proved, is also not sustainable. Petitioner/accused himself had sought that document by moving specific application under Section 91 Cr.P.C. The Trial Court has duly provided that document to the petitioner. Once the document has seen the proceedings of the Trial Court then the Complainant can not be denied the opportunity to lead the said document in evidence by proving the existence of the same in accordance with law. More over, since the petitioner has tried to deny the existence of

liability itself in the case under Section 138 of the Negotiable Instruments Act, therefore, it would defeat the justice itself if the Complainant is denied opportunity to show the existence of legally enforceable liability against the petitioner.

In view of the above, this Court does not find any illegality or impropriety in the Order passed by the Trial Court. Finding no merit in the petition, the same is dismissed.

**17<sup>th</sup> December, 2018**

**Shivani Kaushik**

**[RAJBIR SEHRAWAT]**

**JUDGE**

*Whether speaking/reasoned*      *Yes/No*

*Whether Reportable*              *Yes/No*