

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

CRM-M No.2354 of 2019

Date of decision: 21.01.2019

Tapinder Datta

....Petitioner

Versus

Sandeep Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.D. Sharma, Advocate
for the petitioners.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting-aside the order dated 11.10.2018 vide which the application filed by the petitioner/complainant in a complaint under Section 138 of the Negotiable Instruments Act (in short 'the N.I. Act') for leading additional evidence to examine a handwriting expert along with certain documents was declined by the trial Court.

Counsel for the petitioner has submitted that the complaint filed by the petitioner under Section 138 of the N.I. Act is pending since 2010 and after the petitioner/complainant has concluded the evidence, the respondent/accused, while leading his defence evidence, has tendered a document dated 28.10.2012 Ex.DW3/A and writing dated 28.02.2010 Ex.DW3/B. These documents though were available on record since the time of filing of the complaint before the trial Court however, in spite of the same, the complainant could not produce the said evidence on record at the relevant time and, therefore, the petitioner moved an application for leading additional evidence.

The application was contested by the respondent/accused

on the ground that the case is pending since long and the petitioner want to fill up the lacuna in the complainant's evidence, which was required to be led while leading his evidence. It is further stated in the application that both the aforesaid documents are very well within the knowledge of the complainant and during the cross-examination of the complainant, which was conducted on 02.07.2013, the aforesaid writing was also put to the complainant while he appeared as CW1. It is also stated in the reply that the handwriting expert Anil Kumar Gupta produced by the respondent/accused was cross-examined at length by Arun Gagneja, handwriting expert of the complainant and, therefore, there is no justification to allow the petitioner/complainant to examine another handwriting expert when the handwriting expert appointed by him has cross-examined the handwriting expert produced by the respondent. The trial Court dismissed the application vide order dated 11.10.2018 holding that there is no justification to allow the application, which is filed just to fill up the lacuna.

Counsel for the petitioner has further argued that the trial Court should have allowed the application of the petitioner/complainant and dismissal of the same will result in miscarriage of justice as the petitioner want to lead his additional evidence to rebut the evidence which has come during the defence evidence, led by the respondent/accused.

After hearing the counsel for the petitioner, I find no ground to allow the present petition. The trial Court has rightly held that the complainant, in a case under Section 138 of the N.I. Act has no right to lead additional evidence to rebut the defence evidence led by the respondent/accused as there is no specific provision in this regard.

It is also held by the trial Court that once the petitioner has produced the handwriting expert, who has cross-examined the handwriting expert produced by the respondent. Regarding the aforesaid 02 documents, it is held that the petitioner has no right to lead the additional evidence in order to rebut the aforesaid 02 documents as these are on record and in the knowledge of the petitioner since beginning of the trial.

With regard to the remaining documents i.e. affidavit, cheques and pronotes, the petitioner has nowhere relied upon the same in the complaint filed by him. Moreover, it is not proved that these documents were not in the knowledge of the complainant when he was leading the evidence, therefore, I find no ground to disagree with the findings recorded by the trial Court that the application, which has been filed in the year 2018 after 08 years of filing of the complaint and that too much after the conclusion of his evidence, is nothing but an attempt to fill up the lacunas especially in view of the fact that the application filed under Section 311 Cr.P.C. do not meet the requirement of law.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

21.01.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No