

124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7269 of 2019

Date of decision : February 15, 2019

Ajay Suri

....Petitioner

Versus

Rahul Sharma

.....Respondent

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Roopam Jain, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

Prayer made in the petition is for setting aside the order dated 24.1.2019 passed by the Court of JMIC, SAS Nagar in complaint case NI 257 of 2015 dated 8.4.2015 under Section 138 of the Negotiable Instrument Act (Annexure P-1) vide which application under Section 311 Cr.P.C. filed by the petitioner/complainant to place on record statement given by accused Rahul Sharma in the Court of JMIC, Chandigarh on 20.11.2018 has been dismissed.

Brief facts of the case are that the petitioner/complainant had filed a complaint under Section 138 of the Negotiable Instruments Act (for short '**the Act**') against the respondent, which is pending before the Judicial Magistrate 1st Class, SAS Nagar. The case was filed in the year 2015 and is now fixed for defence evidence of the accused as the statement under Section 313 Cr.P.C. was recorded on 12.9.2017.

Counsel for the petitioner has submitted that another complaint

title as 'Gaurav Kansal Vs. Rahul Sharma', (the respondent), is also pending before the JMIC, Chandigarh under Section 138 of the Act and in that case also the statement of the respondent/accused was recorded on 3.9.2017.

Since there was a variation in the two statements of the respondent as he has taken a slightly different stand in both the statements under Section 313 Cr.P.C., the petitioner filed an application in the present complaint under Section 311 Cr.P.C. for granting permission to produced on record the statement of the respondent/accused recorded under Section 313 Cr.P.C. in the case titled as 'Gaurav Kansal Vs. Rahul Sharma' pending before JMIC, Chandigarh. This application was contested by the respondent and the trial Court vide impugned order dated 24.1.2019 dismissed the same. The petitioner has filed the present petition challenging the said order.

For reference, the contents of the application filed by the petitioner are reproduced as under :-

- “1. That the above titled case is pending in this Hon'ble Court for today.
2. That the accused in the present case is also an accused in complaint case file titled as 'Gaurav Kansal Vs. Rahul Sharma' under Section 138 NI Act pending in the Court of Sh. Parveen Kumar, Judicial Magistrate 1st Class, Chandigarh.
3. That the complainant want to place on record the certified copy of statement under Section 313 Cr.P.C. of accused Rahul Sharma in the above mentioned case.
4. That no prejudice will be caused to the accused if

this application is allowed as this document is essential for just decision of the case.

It is, therefore, respectfully prayed that the present application may kindly be allowed in the interest of justice.”

Counsel for the petitioner submits that the statement of the respondent/accused recorded under Section 313 Cr.P.C. in other case has a direct bearing on this present case, therefore, therefore, the trial Court has wrongly allowed the application filed under Section 311 Cr.P.C.

After hearing counsel for the petitioner, I find no ground to interfere in the impugned order passed by the trial Court. Firstly, perusal of the application shows that nothing is mentioned as to how said statement is relevant in the present case, except that it is essential for just decision of this case. Therefore, the application do not meet the requirement of Section 311 Cr.P.C., being totally vague.

Even otherwise, the arguments of the counsel for the petitioner that since the respondent has taken a different stand in his statement in complaint titled as 'Gaurav Kansal Vs. Rahul Sharma' has no weight as the statement of an accused under Section 313 Cr.P.C. recorded only on the basis of the evidence led in a particular case and if the accused had given a different explanation in an another complaint where he is stated that Gaurav Kansal has misused the cheques, however, it has no gain in the present case unless the petitioner/ complainant proves the relevancy of the said statement. The trial Court has recorded a finding that the case is fixed for final argument and, at this stage, the petitioner has moved an application. It is also noticed by the trial Court that even on an earlier occasion the

petitioner filed another application under Section 311 Cr.P.C. for placing on record certified copy of the cross-examination of complainant Gaurav Kansal in the earlier complaint filed against the respondent and that application was allowed. However, the petitioner did not include the present prayer in the said application. Thus, filing of this application at the final stage is nothing but just to delay the proceedings. Even otherwise, the counsel for the petitioner has failed to explain the relevancy of the statement of accused recorded under Section 313 Cr.P.C. in another complaint as even the application is silent and vague about the same, therefore, I find no ground to interfere in the impugned order dated 24.1.2019 passed by the Judicial Magistrate 1st Class, SAS Nagar.

The petition is, accordingly, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

February 15, 2019
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Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO