

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1376-2017 (O&M)

Date of decision: 08.11.2019

Sukhpal Singh

....Petitioner

Versus

Baljit Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Ruchi Sekhri, Advocate
for the petitioner.

Mr. Devinder Kumar, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 11.01.2017 passed by the trial Court in complaint No.COMA/1817 of 2014 dated 26.07.2013 titled as Baljit Singh Vs. Sukhpal Singh, vide which the application filed by the respondent-complaint under Section 311 Cr.P.C. was allowed and a new witness was permitted to be examined.

Learned counsel for the petitioner submits that the complaint was filed in the year 2013 and the petitioner was summoned on 17.10.2013. On 03.03.2016, the evidence of the respondent-complainant was closed, by making a statement by his counsel and the case was fixed for recording

statement of the accused under Section 313 Cr.P.C., which was recorded 29.03.2016. Thereafter, the case was fixed for defence evidence and later on, the case was fixed for final arguments on 26.10.2016. Learned counsel further submits that on 26.10.2016, after hearing the arguments, the case was adjourned for 29.10.2016 and at that stage, the respondent-complainant moved an application under Section 311 Cr.P.C. for summoning the concerned Clerk of the State Bank of India along with the complete record of the case including memo dated 22.05.2016 issued by the bank, vide which the cheque was dishonoured.

Learned counsel for the petitioner has further submitted that in the application, it was stated that while issuing the memo by the bank regarding dishonouring of the cheque Ex.C2, no date was mentioned. Thereafter, the complainant obtained a certificate dated 28.10.2016 from the bank, in which it was stated that the memo Ex.C2 is dated 31.05.2013. The application was moved seeking permission to produce on record the memo Ex.C2 and the certificate dated 28.10.2016 to show that the cheque dated 15.03.2013, when produced before the Axis Bank, the same was returned on 22.05.2016 and in this regard, State Bank of India has issued a memo Ex.C2, which initially did not bear the date and now the complainant wants to prove the said date by examining an official of the bank.

It is further submitted on behalf of the petitioner that the petitioner contested the application on the ground that the complainant had himself closed the evidence on 03.03.2016 by making a statement of his counsel and the date, which is now sought to be proved, was not stated in the

complaint as well as legal notice Ex.C5 and therefore, at the fag end of the trial, the same cannot be permitted to be proved on record, as it is not explained either in the legal notice or in the complaint itself. Learned counsel has also submitted that in fact, the application has been moved to fill up the lacuna, as the memo Ex.C2 exists much prior to the issuance of the certificate dated 28.10.2016 and there is no explanation by the complainant, as to why the application was moved after a period of three years that too, when the case was finally argued before the Court.

Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in **Mohan Lal Vs. Union of India, 1991 (3) RCR (CrI.) 183**, wherein it is held that though the power under Section 311 Cr.P.C. are wide to summon, recall or re-examine a witness, however, this power should not be used to fill up the lacuna by the prosecution or the defence.

In reply, learned counsel for the respondent-complainant has submitted that the application has been moved just to bring it to notice of the Court that the date, when the memo Ex.C2 was returned, is 31.05.2013 and the complainant wants to summon the record regarding presentation and dishonour of the cheque dated 15.03.2013 by the Axis Bank, Sangrur vide memo dated 22.05.2016 and regarding issuance of the said memo by the State Bank of India Ex.C2 and also to prove the certificate dated 28.10.2016 issued by the State Bank of India, in which it was stated that the memo was issued on 31.05.2013 and the same will not change either nature of the case or does not amount to filling up of the lacuna and will enable the trial Court to do fair

and proper decision of the case.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (a) A perusal of the original complaint dated 26.07.2013 shows that it is nowhere mentioned that the date of the memo, vide which intimation was given to the complainant, is 22.05.2016.
- (b) Learned counsel for the respondent-complainant could not deny that even in the legal notice, which was issued prior to filing of the complaint, no date is given and therefore, the complainant cannot be permitted to lead an additional evidence, which is not based on the contents of the legal notice and the complaint.
- (c) Learned counsel for the respondent-complainant also could not deny that the memo Ex.C2 was available with the complainant, when the legal notice was issued as well as when the complaint was filed. The legal notice and the complaint pertains to the year 2013 and it was well within knowledge of the complainant that there is no date on the memo Ex.C2. Therefore, at the fag end of the trial, when statement of the accused under Section 313 Cr.P.C. has been recorded and defence evidence has already concluded, allowing the complainant to lead such evidence, which is not pleaded in the legal notice as well as in the complaint, would certainly amount to filling up of the lacuna.
- (d) It is worth noticing here that one of the legal defence taken by the petitioner-accused is that the legal notice was issued by the

complainant, after expiry of the statutory period and therefore, now the complainant has moved this application just to fill up that lacuna and to cover up the period of limitation.

For the reasons recorded above and in view of judgment of the Hon’ble Supreme Court in **Mohan Lal**’s case (supra), this petition is allowed and the impugned order dated 11.01.2017 passed by the trial Court is set aside.

[**ARVIND SINGH SANGWAN**]
JUDGE

08.11.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No