

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 12.03.2019

1. CRM-M-10557-2019 (O&M)

Ashwani Bhardwaj

....Petitioner

Versus

State of Punjab and another

....Respondents

2. CRM-M-10793-2019 (O&M)

Ashwani Bhardwaj

....Petitioner

Versus

State of Punjab and another

....Respondents

1. CRM-M-10808-2019 (O&M)

Ashwani Bhardwaj

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.S. Majithia, Advocate
for the petitioner (in all cases).

ARVIND SINGH SANGWAN, J. (Oral)

This order shall dispose of all the three petitions praying for

setting aside the order dated 30.01.2019 (Annexure P-4), vide which the trial Court has dismissed the application filed under Section 311 Cr.P.C. as well as the order dated 20.02.2019 (Annexure P-6) passed by the revisional Court, vide which the revision petition, challenging the order of the trial Court, was dismissed as withdrawn.

Brief facts of the case are that the respondent-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act'), on account of dishonouring of a cheque of Rs.7.00 lacs issued by the petitioner. The case is pending since 2013 and presently, it is at the stage of recording the defence evidence and the petitioner has filed an application under Section 311 Cr.P.C. for summoning the Ahlamads of different Courts pertaining to 15 judicial files that the petitioner want to produce on record the civil suits and criminal complaints filed by the complainant and his family members, against various persons under Section 138 of N.I. Act. In para No.3 of this application (Annexure P-2), the petitioner has taken a specific stand that from the very beginning in his defence, it is stated that the complainant and his family including his father Sandeep Kumar Singhal, uncle Pardeep Singhal and his grandfather Sohan Lal Singhal are doing the business of money lending, without having any money lender's licence and therefore, the complaint is not maintainable.

This application was contested by the complainant on the ground that the petitioner is delaying in disposal of the case, as the same is pending for the last 05 years. In reply, it was stated that the complainant has obtained a licence in his favour under the Punjab Registration of Money

Lender Act, 1938 from the concerned authority i.e. District Collector and has attached a copy of the licence along with the reply to the application under Section 311 Cr.P.C.

The trial Court, vide impugned order dated 30.01.2019, has dismissed the application observing that record of the civil and criminal litigations filed by the complainant or his family members against different persons, has nothing to do with the controversy in dispute, as the complaint under Section 138 of N.I. Act is pending on account of dishonouring of a cheque of Rs.7.00 lacs. It was also observed that in the plea of defence recorded under Section 313 Cr.P.C., the petitioner has admitted taking loan from the complainant but stated that it was interest free and the cheque was given against security. It is also held by the trial Court that the case was fixed for defence evidence for the first time on 01.12.2015 and till 24.05.2017, the petitioner, despite due diligence, has not moved any such application for summoning the aforesaid record and for a long period, the petitioner has failed to lead any such evidence.

The revision petition was filed by the petitioner against the impugned order passed by the trial Court, however, the same has been dismissed as withdrawn.

Learned counsel for the petitioner has argued that the application filed by the petitioner to produce on record the plaints in the civil suits as well as complaints in the other proceedings, initiated by the complainant or his family members under Section 138 of N.I. Act, proved that they are in the business of money lending, without obtaining any

licence and therefore, the evidence is necessary to be produced on record.

After hearing learned counsel for the petitioner, I find no ground to interfere in the impugned order passed by the trial Court.

(a) Firstly, it is own case of the petitioner in para No.3 of the application filed under Section 311 Cr.P.C. that the petitioner knew since beginning that the complainant and his family members are in the business of money lending, however, neither any specific cross-examination of the complainant was done in this regard nor all the aforesaid plaints/complaints, proposed to be produced by way of additional evidence, were ever put to him during his cross-examination. Needless to say that statement of the complainant or his cross-examination is not placed on record to show that he was cross-examined on this point.

(b) Secondly, the complainant, in reply to the application under Section 311 Cr.P.C., has already placed on record the money lender's licence issued by the District Collector, who is competent authority under the Punjab Registration of Money Lender Act, 1938 and it is specifically stated in the reply that since the petitioner has never raised this plea earlier, he could not produce the same on record and the same has no relevance in the present case.

(c) Thirdly, the case is fixed for defence evidence since 01.12.2015 and till filing of the application under Section 311 Cr.P.C. for a period of one and half years, the petitioner has not led any such defence evidence, though he had ample time to do so, as it is own case since the beginning in his defence that the complainant or his family members are in the business

of lending money to various persons.

(d) It is worth noticing here that on an earlier occasion, the petitioner has filed similar application under Section 311 Cr.P.C., which was declined by the trial Court, however, in CRM-M-39856-2017, CRM-M-39858-2017 and CRM-M-39879-2017, the petitioner was granted one opportunity to examine the concerned Clerk from the office of Deputy Commissioner, Ludhiana on payment of costs of Rs.3,000/-, with a further direction that the trial Court should conclude the trial expeditiously preferably within a period of 03 months. The petitioner, even on that occasion, had an opportunity to move such application but filing of this application at this stage, to summon the record of 15 cases, which has no relevance with the present complaint, is nothing but misuse of process of law as the petitioner only want to delay the decision of the case.

In view of the above, I find no ground to differ with the findings recorded by the trial Court in the impugned order dated 30.01.2019, as the petitioner has failed to show any ground to allow the application under Section 311 Cr.P.C.

All the three petitions are dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

12.03.2019
vishnu

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