

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

CRM-M-2020-2015 (O&M)
Date of decision : 08.11.2019

Jaswinderpal Singh

...Petitioner

Versus

Harpal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S. Guliani, Advocate for the petitioner.

Mr. G.S. Sirphiki, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order dated 08.12.2014 passed by the Judicial Magistrate Ist Class, Ludhiana, dismissing application filed under Section 311 Cr.P.C. to produce the alleged writing/compromise and to prove the same.

Learned counsel for the petitioner contends that in the complaint itself, petitioner/complainant has made following assertions:-

“5. That when the complainant confronted the accused with his act of cheating, the accused requested the complainant not to initiate criminal proceedings against him and admitted the liability of the accused in writing and issued a cheque bearing No.064759, dated 30/11/2013 for Rs.19,50,000/-, drawn on Punjab National Bank, Feroze Gandhi Market, Ludhiana and assured the complainant on its presentation it shall be encashed.”

He has submitted that inadvertently, the aforesaid document/writing/compromise/settlement could not be produced when complainant was examined. He submits that the complainant filed an application for permission to produce the aforesaid writing and to prove the same by leading evidence. He further draws attention of the Court to the fact that cheque in question which was issued pursuant to the aforesaid agreement in writing for amount of ₹19,50,000/- stood dishonoured on presentation forcing the petitioner to file the complaint.

On the other hand, learned counsel for the respondent submits that the petitioner-complainant had enough opportunity to produce the documents. He further submits that petitioner was specifically asked question with regard to agreement but the petitioner did not even then wake up and produce the same.

This Court has considered the submissions of the learned counsel for the parties.

Section 311 Cr.P.C. has been incorporated enabling the Court to permit the production of additional evidence as is commonly known. Section 311 Cr.P.C. is in two parts, first part enables the Court to permit additional evidence whereas second part makes it obligatory for the Court to permit the parties to lead evidence in order to do substantive justice. Reference in this regard has been made to **Zahira Habibullah Sheikh and another Vs. State of Gujarat and others, 2006(3) SCC 374.**

In the present case, learned Judicial Magistrate dismissed the application by wrongly noting that the agreement to sell has not been produced. The petitioner-complainant in para 5 of the complaint which has

been extracted above, is not referring to the agreement to sell. Reference is to the writing which was allegedly executed by the respondent-accused while delivering cheque in question.

It is also not in dispute that the complainant is leading his evidence. However, complainant is to appear for re-examination so that he being signatory of the document, is able to produce and prove the same.

Keeping in view the aforesaid facts, the present petition is allowed. Order dated 08.12.2014 passed by the Judicial Magistrate Ist Class, Ludhiana, is set aside.

Petitioner is permitted to re-examine himself, produce and prove the agreement by examining marginal witness.

08.11.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No