

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

Sr.No.204

CRM-M-20484-2017

Date of Decision:17.01.2019

Vidya Sagar

....petitioner

Versus

Mukesh

.....respondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Keshav Pratap Singh, Advocate
for the petitioner

None for the respondent

ARVIND SINGH SANGWAN, J. (ORAL):

Prayer in this petition is for setting aside the order dated 08.05.2017, passed by the Sub-Divisional Judicial Magistrate, Ganaur, vide which the application filed by the petitioner, under Section 311 of the Code of Criminal Procedure (for short, "Cr.P.C."), seeking permission to produce the record of sale deed bearing No.3915 dated 09.10.2012, executed by him in favour of Smt.Babita, wife of Anil and to examine one of its attesting witness namely Harish Kaushik son of Jai Bhagwan, resident of Railway Road, Ganaur, was declined by the trial Court.

Brief facts of the case are that the petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act, (for short, "the N.I.Act"), against the respondent/accused, stating that the respondent had taken a friendly loan of Rs.9,20,000/-, as both the parties were having acquaintance and in lieu thereof, the respondent had issued a cheque dated 15.11.2013 of an equivalent amount of Rs.9,20,000/-. On presentation of

cheque before the bank, the same was dishonoured for the reason "*Funds Insufficient*". Thereafter, the petitioner filed the present complaint.

Learned counsel for the petitioner submits that though, while leading his evidence, the petitioner could not produce the aforesaid sale deed in order to prove his financial capacity to extend the loan to the respondent to a tune of Rs.9,20,000/-. It is further submitted that in fact, immediately preceding the time of giving the aforesaid loan amount, the petitioner had executed a sale deed on 19.10.2012, in favour of one Smt.Babita and the petitioner was having sufficient money to give the loan amount to the respondent and therefore, the petitioner, in order to prove the said fact wants to lead the additional evidence.

Learned counsel for the petitioner submits that the petitioner has given all the details in the application filed under Section 311 Cr.P.C. before the trial Court explaining his bona fide to lead additional evidence, however, the trial Court has not appreciated the same.

The respondent by filing the reply has contested the aforesaid application on the ground that the case is now fixed for recording the defence evidence of the accused. Therefore, the same has been filed at a belated state and is liable to be rejected.

The trial Court, vide impugned order dated 08.05.2017 has dismissed the application, only on the ground that the petitioner while leading his evidence has failed to produce on record the sale deed and by allowing the application under Section 311 Cr.P.C., the petitioner cannot be permitted to fulfil the lacuna in his evidence.

As noticed above, there is no representation on behalf of the respondent. The position was same, even on the last date of hearing.

After hearing learned counsel for the petitioner, I find merit in the present petition.

It has been held by the Hon'ble Supreme Court in "U.T.of Dadra and Haveli and another vs. Fatehsinh Mohansinh Chauhan, 2006(4) RCR (Criminal) 113, that where the proposed additional evidence will enable the Court to find out truth and will enable the Court to come to a just and fair decision, the same can be allowed.

Even otherwise, the sale deed is a registered document and it can be proved by the petitioner, by producing one of its attesting witness i.e.Harish Kaushik.

In view of the above, the present petition is allowed. The impugned order dated 08.05.2017 passed by the trial Court is set aside. The trial Court is directed to grant one effective opportunity to the petitioner to lead his additional evidence i.e.sale deed dated 19.10.2012 and examine the aforesaid witness namely Harish Kaushik. It will, however, subject to payment of costs of Rs.5000/- to be deposited with the District Legal Services Authority.

(ARVIND SINGH SANGWAN)
JUDGE

17.01.2019

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No