

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

CRM-M-13895-2019

DATE OF DECISION:-27.03.2019

AJAY SHARMA

...PETITIONER...

V.

M/S KALATMIKA DESIGNS PVT. LTD.

..RESPONDENT...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Suneet Pal Singh Aulakh, Advocate,
for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Prayer in this petition under Section 482 Cr.P.C. has been made for setting aside order dated 07.02.2019 of trial court, whereby, application filed by the petitioner seeking permission for appointment of handwriting and fingerprint expert for the purpose of comparison of the signatures, was dismissed.

Briefly, petitioner is facing trial in complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "Act"), in which, respondent-complainant relied upon documents Ex.C-4 to C-98 and produced its originals in court at the time of leading affirmative evidence. The petitioner, after seeing and examining those documents, put certain questions to the witnesses of the respondent. Thereafter, after closure of its evidence by respondent-complainant, statement of the petitioner under

Section 313 Cr.P.C. was recorded and he was permitted to lead his

evidence in his defence. However, at the fag end of the trial, petitioner moved an application to direct respondent-complainant to re-produce aforesaid documents for the purpose of comparison of the same from specific hand-writing and fingerprint expert Sh. Navdeep Gupta.

The trial court, after hearing both the sides, dismissed the said application of the petitioner, vide impugned order dated 07.02.2019 (P-1).

Learned counsel contends that observation of the trial court in the impugned order that originals of Ex.C-4 to C-98 were produced by the respondent-complainant during his evidence, is incorrect, inasmuch as, originals of said documents were never produced in the trial court. The petitioner has a legal right to rebut the evidence of the respondent-complainant in his defence, which could not have been curtailed by the trial court by dismissing his application (P-2). In support of his contention, he has placed reliance upon judgment of Hon'ble Supreme Court titled as **"Zahira Habibullah Sheikh and Anr. vs. State of Gujarat and ors."**, 2006(2) RCR (Criminal) 448 and of this Court, titled as **"Puneet Kumar vs. Amandeep Singh"**, 2018 (4) Law Herald 3416.

Having given thoughtful consideration to the submissions, this Court finds instant revision petition completely devoid of any merit for the reasons to follow:-

In the impugned order, trial court has specifically observed that "the said documents Ex.C-4 to C-98 were produced by the respondent-complainant during its evidence and opportunity was granted to the petitioner to cross-examine the complainant under Section 145(2) of the

Act. Even the said documents were produced in the preliminary evidence of the respondent-complainant recorded on 21.01.2013. It was only, thereafter that the petitioner was served with a notice of accusation".

The above observation of the trial court, disentitles the petitioner to seek re-production of the aforesaid documents, more particularly, when those documents have no relevancy to decide the real controversy, inasmuch as, the core dispute between the parties is as to whether the petitioner and his wife issued the cheque in question to the respondent-complainant.

The respondent-complainant did produce the aforesaid documents to prove his assertion and bona fide that the cheque in question was issued by the petitioner against his legal liability, which accrued after transacting with each other. Therefore, the said documents would not in any manner, help the petitioner to rebut stand of the respondent-complainant that cheque in question was issued by him.

It is pertinent to mention that in his statement under Section 313 Cr.P.C., the petitioner took a plea in the defence that cheque in question was forged and fabricated document. Therefore, only to that extent, the petitioner was to lead evidence in his defence and not beyond that.

That apart, in a complaint filed under Section 138 of the Act, burden to prove his allegations in the complaint, is always upon the complainant. In case, he is able to discharge his burden, in that eventuality, his claim has to be accepted. Resultantly, in case, respondent-complainant is able to convince that his complaint is genuine, only then

the same would be accepted.

Moving of the application (P-2) by the petitioner at the fag end of the trial is nothing, but is a gross abuse of the process of law. It can safely be inferred that it was filed with mala fide intention with sole object to delay the proceedings of the case. The trial court rightly and legally dismissed the same. Therefore, the impugned order, which is perfectly legal, cannot be set aside by this Court, while exercising its power under Section 482 Cr.P.C.

In the given facts and circumstances, the authorities relied upon by learned counsel for the petitioner, altogether on different issues and distinguishable on facts of the present case, are of no help to him.

Dismissed.

27.03.2019

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:
whether reportable:

Yes/No
Yes/No