

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. CRM-M-36550 of 2018
Date of Decision: 31.10.2019**

Kala Ram Mendiratta

...Petitioner

VERSUS

Dr. Shashi Adlakha and another

...Respondents

2. CRM-M-36589 of 2018

Raj Kumari

...Petitioner

VERSUS

Dr. Shashi Adlakha and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. RS. Athwal, Advocate
for the petitioners in both the petitions.

Mr. Sujeet Singh, Advocate
for Mr. Dinesh Arora, Advocate
for respondents in both the petitions.

SURINDER GUPTA, J.(Oral)

Heard.

For the sake of brevity, facts are being extracted from CRM-M-36550-2018.

Petitioner is complainant in case no. 1300 dated 14.03.2016 filed under Section 138 of the Negotiable Instruments Act titled as '*Kala Ram Mendiratta vs. Dr. Shashi Adlakha and others*'. He moved application under Section 311 Cr.P.C. to bring on record bank account of parties to prove source of payment and mode of payment of loan to accused. Application was declined by the trial Court with the observation that the complainant cannot be allowed to fill up the lacuna and allowing of this

application, at this stage, will result in *de novo* trial. Learned Court of Revision below also affirmed the order of the trial Court.

The petitioner has sought production of additional evidence on the ground mentioned in para 2 of the application, which is reproduced as follows:-

“2. That the applicant is the complainant in this case. Originally, the accused has not denied the fact that the cheque was issued by the accused. Even during the cross examination over the complainant, no suggestion was given to the complainant that the cheque was not issued to the accused. Nor was it denied that the amount of the cheque stood deposited in the account of accused. Hence, the complainant did not find it necessary to get produced the Bank records to prove the payment through the cheque in question. However, now the accused party is laying stress and more emphasis on the point of mode of payment and source of payment. Hence, it has become essential to bring on record the bank accounts of the parties to prove the source of payment and the mode of payment.”

In the complaint under Section 138 of the Negotiable Instruments Act, the source of payment and mode of payment of loan to accused may be a vital fact that may weigh before the trial Court while deciding the complaint on merit. The complainant has sought permission to produce on record copy of account books of parties as the issuance of cheque and signatures on the cheque issued by respondents are not disputed. Production of these documents through additional evidence will not cause any prejudice to respondents as they will have the liberty to rebut the documents so produced by leading evidence in defence. The observations of Courts below that allowing of the application under Section 311 Cr.P.C.

moved by the complainant-petitioner will result in filling up the lacuna and starting of *de novo* trial are without any basis. It is incumbent upon the Court while deciding the application under Section 311 Cr.P.C. to look into the fact as to whether documents sought to be produced is a material piece of evidence and will assist the Court in reaching just conclusion at the end of the trial. The documents sought to be produced relate to subject matter of the complaint and is a material piece of evidence to prove the source and mode of payment of loan to respondents. It will not only help the complainant to corroborate his version but also give liberty to respondents (accused) to rebut the contention so raised by complainant about source of payment and mode of payment and consequently, assist the Court in proper and just disposal of the case.

In view of above facts, I find order passed by the Court below as not sustainable in the eyes of law and the same is set aside. These petitions are allowed and application filed by petitioners under Section 311 Cr.P.C. are allowed.

Complaints are pending before the trial Court for the last about three years, as such, trial Court is directed to expedite trial of the case and try to dispose of the same at the earliest, preferably within a period of four months of receipt of copy of this order.

October 31, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No