

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

**Decided on: 29.01.2019**

**1. CRM-M No.50748 of 2018**

Karam Chand

....Petitioner

Versus

State of Punjab and others

....Respondents

**2. CRM-M No.50894 of 2018**

Karam Chand

....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN**

**Present :** Mr. Shiv Kumar, Advocate  
for the petitioner (in both the petitions)

**ARVIND SINGH SANGWAN, J. (Oral)**

Prayer in these petitions is for setting-aside the order dated 13.09.2018 (Annexure P2 in CRM-M No.50748 of 2018) vide which the application filed under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C.') by the petitioner has been dismissed and for setting-aside the order dated 18.10.2018 (Annexure P2 in CRM-M No.50894 of 2018) whereby the application for exhibiting certain documents has also been dismissed by the trial Court.

Brief facts of the case are that the petitioner got the FIR No.9 dated 10.02.2009 registered under Sections 406/420/120-B IPC at

Police Station Gardhiwal, District Hoshiarpur against the respondents/accused Nos.2 to 4. In nutshell, the allegations in the FIR are that the accused persons have taken away the tractor of the petitioner, which was purchased from M/s. Kang Motors, Hoshiarpur on 19.05.2007 for a sum of Rs.3.70 lacs. The accused persons who were working with the said firm on account of removing some defects took away the tractor but the same was never returned back to the petitioner.

After the trial Court framed the charge, the case was fixed for prosecution evidence and vide order dated 02.05.2015 the prosecution evidence was closed and the case was fixed for defence evidence and arguments. At the fag end of the trial, the petitioner moved an application under Section 311 Cr.P.C., seeking permission to lead additional evidence i.e. to produce on record one cheque dated 23.12.2017 and an agreement dated 22.10.2008. It was prayed that PW1, who was examined in this regard be recalled and an official of UCO bank along with the record of the aforesaid cheque issued by one of the accused i.e. Hardeep Singh in favour of the complainant be also summoned. The trial Court vide impugned order dated 13.09.2018 dismissed the application by passing the following order:-

*“....Perusal of the file shows that the present case was registered against the accused under Section 420 and 406 IPC. Further perusal of the file shows that charge in this case was framed on 13.12.2011 and thereafter the case was fixed for evidence of the prosecution. Further perusal of the file shows that evidence of the prosecution was closed by order vide order dated 02.05.2015 and thereafter the case was fixed for evidence of the accused and for*

*argument. The perusal of the file shows that prosecution examined PW1 complainant Karam Chand on 13.03.2012. This witness has already deposed regarding Iqrarnam dated 22.10.2008 in his examination-in-chief. The prosecution was in knowledge of the said agreement dated 22.10.2008 at the time of examination-in-chief of the complainant. The prosecution would have proved the same at relevant time when the case was fixed for evidence of the prosecution. Further the prosecution wants to prove record of cheque bearing No.675660 dated 23.12.2013. The present FIR was registered on 18.02.2009. The cheque has been issued 04 years after the FIR was registered. The prosecution has already availed numerous opportunities to conclude its evidence. There is no ground to allow the present application. According the same is dismissed.*

*Now to come upon 19.09.2018 for defence evidence if any otherwise for arguments.”*

Counsel for the petitioner has submitted that re-examination of PW1 – complainant is necessary to prove the agreement as on an earlier occasion, the petitioner has filed the application under Section 294 Cr.P.C. for admission and denial of the cheque in question, which stands decided by the trial Court as the accused had denied the proposed questions and in that circumstances, it is necessary to examine the official of the concerned bank to prove the aforesaid cheque and also the agreement set up by the petitioner.

A perusal of the impugned order show that the charge in this case was framed on 13.12.2011 and after the complainant appeared as PW1, he has set up an agreement in his examination-in-chief dated 22.10.2008, therefore, once the complainant was in the knowledge of the said document, there was no occasion to allow the application for

leading additional evidence subsequently as no ground is made out in this regard. The trial Court has already recorded the prosecution evidence, which was closed by Court order way back on 02.05.2015 and thereafter, the defence evidence has been led and the case was fixed for arguments. Therefore, after a long lapse of time, the petitioner has moved the instant petition on 31.10.2018, just to fill up the lacuna and delay the conclusion of the trial.

**CRM-M No.50894 of 2018**

The petitioner has moved another application for exhibition of certain documents i.e. the original bill dated 19.05.2017 and delivery challan dated 18.05.2007 and the statement of accused – Hardeep Singh dated 14.12.2008. It is stated in the application that while recording the examination-in-chief of PW1, the aforesaid documents could not be exhibited though they are part of the challan and they are very much necessary to exhibit the same for the proper adjudication of the case.

Counsel for the petitioner has submitted that the evidence of the prosecution was closed on 02.05.2015 by order of the Court and, therefore, the petitioner could not exhibit those documents on record. However, a perusal of the record show that the order dated 02.05.2015 was never challenged by the petitioner and rather he has moved the present application for exhibiting the aforesaid documents, which are neither *per se* admissible nor can be proved without examination of a witness.

Considering the fact that even this application has been

moved after much delay, the trial Court has dismissed the same vide order dated 18.10.2018. The operative part of the order dated 18.10.2018 reads as under:-

*“...Perusal of file shows that charge in this case was framed on 13.12.2011 and since then the case was fixed for evidence of the prosecution. Further perusal of the file shows that PW-1 Karam Chand was examined on 13.03.2012 who is the complainant of the present case. Thereafter, on 02.05.2015 prosecution evidence was closed by order and the case was fixed for defence evidence and for arguments and thereafter on 26.03.2018 two Pws were examined as per the order dated 14.03.2018 passed by the Hon'ble High Court. The present application has been filed almost after the gap of six years after examination of PW-1 Karam Chand and a gap of three years when the evidence of the prosecution was closed by order. The present application has been filed after an undue delay and no proper reason has been mentioned for the same except for the reason that the documents could not be exhibited inadvertently. There is no reasonable ground to allow the present application. Accordingly, application filed by the prosecution/ complainant stands dismissed. Now to come up on 03.11.2018 for defence evidence and for arguments.”*

After hearing the counsel for the parties, considering the fact that the application has been filed after a period of 06 years of recording the evidence of PW1 – Karam Chand, which show that the same has been filed just to fill up the lacuna and the accused persons are facing the protracted trial since 2009, therefore, I find no ground to interfere in the aforesaid orders i.e. dated 13.09.2018 and 18.10.2018,

Dismissed.

**29.01.2019**

Yes/No

Yes/No