

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

**CRM-M No.5946 of 2017 (O&M)
Date of decision: 03.12.2019**

Rajiv Bajaj Estate Officer

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Chanakya Batta, Advocate
for Mr. G.S. Bhatia, Advocate for the petitioner.

Mr. Jagmohan Ghumman, DAG, Punjab.

Mr. Navin Saini, Advocate for respondent No.2.

Mr. Rajinder Kumar, Advocate for respondent No.4.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting-aside the order dated 16.01.2017 passed by the trial Court vide which the application filed by the petitioner under Section 65 of the Indian Evidence Act (in short 'the Evidence Act') for leading secondary evidence was dismissed.

Brief facts of the case are that the petitioner has got registered an FIR against the respondents/accused and during the period, when the prosecution evidence was recorded, an application under Section 65 of the Evidence Act was moved and the said application was dismissed by the trial Court by passing the following order:-

“....Heard on the application under Section 65 of the Indian Evidence Act for leading secondary evidence with regard to the forged and fabricated demand drafts made by accused persons and marked as Mark P9/1 to

Mark P9/38. It is submitted by Id. Counsel for the complainant that accused Deep Sharma along with Gurpreet Singh and Dalbir Singh use to forge and fabricate existing demand drafts of earlier clients of complainant company who had already pay the fee of the complainant company. These demand drafts were used by accused persons after forging and fabricating them by scanning the drafts and then changing the date and amount in the said drafts. These forged and fabricated drafts were taken into possession by Sh. Bawa Singh Investigating Officer during investigation, which are lying in the files of the clients whose money has been embezzled. As such request has been made for summoning the files of the clients of complainant company through Sh. Shamsher Singh Deputy Manager Collections M/s WWICs.

2. The application is hotly opposed by the Id. Defence counsel while filing reply.

3. At the outset it is pertinent to mention that the present application under Section 65 of the Indian Evidence Act has not been filed and signed by Ld. APP for the State. Rather the counsel for the complainant has opted to file the same without the same being endorsed by Ld. APP for the State. As such the application is not maintainable.

4. Further even on merits the application deserves to be dismissed on account of the fact that the present case was fixed for prosecution evidence on 18.05.2010. Numerous opportunities have been availed by the prosecution to lead and conclude its evidence. No new facts have come on record which justify leading of the secondary evidence. Rather the prosecution had filed applications under Section 311 Cr.P.C. which was allowed by the court in due course of law. Even at the stage no reference was made qua production of secondary

evidence. On 24.10.2016, the last application was filed by the prosecution under Section 311 Cr.P.C. was dismissed by this court. Till that time no request was ever received on behalf of the prosecution to lead secondary evidence as mentioned in the instant application. From the above mentioned facts and circumstances it is apparent that no ground is made out for granting permission to lead secondary evidence. The provision under Section 65 of the Indian Evidence Act can be invoked only where there are sufficient grounds to believe that the original document could not be produced despite best efforts made by the party and the same is subject to proof of existence and loss. However, no such averment has been made in the instant application. It was the duty of Investigating Officer to produce all the relevant documents seized by him during investigation. As such will these observations, the instant application stands dismissed being without merits. File be put up on 30.01.2017 for remaining entire evidence of the prosecution. Accordingly, PWs be summoned for date fixed.”

Thereafter, the petitioner has filed the present petition challenging the aforesaid order dated 16.01.2017.

It is worth noticing that during the pendency of this petition, on 04.09.2018, a direction was issued to the trial Court to record the statement of the Investigating officer, by giving a right to both the parties to put the relevant documents to him during his examination-in-chief as well as cross-examination and the interim order directing the trial Court to adjourn the proceedings beyond the date fixed was vacated.

Counsel appearing for the respondents have argued that the statement of the Investigating Officer namely Bawa Singh stands

recorded on 26.11.2018 as PW13 and the documents which are sought to be produced by the petitioner by leading the additional evidence, have already been put to him.

Counsel for the respondents have further argued that even the statement of the accused under Section 313 Cr.P.C. has been recorded and the case is fixed for final arguments and, thus, they pray for dismissal of the case.

After hearing the counsel for the parties, finding no reason to disagree with the well-reasoned findings recorded by the trial Court, dismissing the application filed under Section 65 of the Evidence Act, for leading secondary evidence and also in view of the fact that the relevant documents which were sought to be produced by the petitioner, have already been put to the Investigating Officer, who were examined subsequently, I find no ground to interfere in the order impugned.

Accordingly, the present petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

03.12.2019

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No