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

**Crl. Misc. No.M-9101 of 2018 (O&M)
Date of Decision: December 17, 2019**

Lakhvir Singh

.....PETITIONER(s).

VERSUS

Kuldip Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Madaan, Advocate
for the petitioner (s).

Mr. Sunil Agnihotri, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Heard.

In the complaint under Section 138 of Negotiable Instruments Act, evidence of petitioner was closed vide order dated 13.10.2016. He moved application dated 25.10.2016 (wrongly mentioned as 25.10.2010 in Annexure P6) under Section 311 of Cr.P.C. for recalling (word “recalling” was wrongly used in fact the petitioner wants to summon) Sukhwinder Kaur and tendering the conclusion report prepared by the office of Commissioner of Police, Jalandhar.

The application was declined and the revision against the order of lower court was also dismissed.

Learned counsel for petitioner submits that by examining Sukhwinder Kaur, petitioner intends to prove the circumstances under

which the cheque signed by him was given to the complainant. She is most

material witness as cheque was given in the presence of Kulwant Singh who has died and this fact is in the knowledge of Sukhwinder Kaur. Regarding report of Commissioner of Police, Jalandhar, he submits that police while enquiring the complaint filed by wife of complainant has given certain findings which support the contention of petitioner. The trial court without looking into this fact has refused to allow the petitioner to produce the above evidence in defence which is very material for disposal of case.

Learned counsel for the complainant has argued that it is no where the case of petitioner that cheque was issued in the presence of Kulwant Singh. The evidence of petitioner had already been closed by order and the application under Section 311 of Cr.P.C. was not maintainable.

So far as the report of Additional Deputy Commission of Police, Jalandhar (Annexure P-5) is concerned, the same is not relevant in the facts and circumstances of the case as the petitioner is required to prove his defence by leading evidence and not on the basis of any report which is not perse-admissible.

The petitioner intends to examine Sukhwinder Kaur to prove the circumstances in which the cheque was given to the complainant. The signature on the cheque are admitted and defence of the petitioner is that it was given as security. The evidence sought to be produced by the petitioner is quite material despite the fact that his evidence was already closed by order and opportunity to the petitioner to prove this evidence could be allowed. The court below instead of looking into the above facts have made observations on other aspects which are not relevant for deciding the

evidence sought to be produced or the plea of the petitioner.

As a sequel of my above discussion, this petition is allowed and application of the petitioner under Section 311 of Cr.P.C. is partly allowed to the extent he wants to examine Sukhwinder Kaur widow of Kulwant Singh Khuman, subject to payment of Rs.5000/- as costs, which will be paid to the complainant by way of demand draft. The petitioner will produce Sukhwinder Kaur in court at his own responsibility and will not be provided any assistance by the court to summon her. The trial court will provide only one opportunity to him to examine Sukhwinder Kaur.

December 17, 2019
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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***