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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33710-2019

Date of Decision : August 26, 2019

Dr. Balbir Singh Sekhon alias Balbir Singh

.... Petitioner

Versus

Darshan Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Rakesh Bhatia, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of order dated 6.12.2018 (Annexure P/7) passed by learned trial Magistrate in a complaint titled **Darshan Singh Vs. Balbir Singh** under Section 138 of the Negotiable Instruments Act, 1881 (for short, "**the Act**"), whereby the application filed by the present petitioner for de-exhibiting Ex.C-10 and Ex.C-11 was turned down; and order dated 24.07.2019 (Annexure P/10) passed by learned Sessions Judge, Ludhiana vide which revision filed by the petitioner against the order, Annexure P/7, was also dismissed.

2 Facts relevant for the purpose of decision of the present petition; Darshan Singh, complainant had filed complaint under Section 138 of the Act for dis-honour of two cheques to the tune of Rs.25.00 Lakhs each. The complainant had tendered documents, Ex. C/10 and C/11. The

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petitioner challenged the said order after expiry of period of three years that the said documents could not be exhibited as the same were not exhibited in his presence and the same were required to be proved as per law and the petitioner was to cross-examine the witness.

3. Learned counsel for the petitioner contended that the documents were not exhibited in his presence and as per law, the matter be remitted back to learned trial Judge to decide the admissibility of documents and to look into and decide, whether the documents were to be exhibited or marked or taken on record. To support his argument, learned counsel for the petitioner has placed reliance upon decision of Hon`ble Bombay High Court in **Shri Gopal Shankarrao Deshmukh Vs. Jagdamba Nagri Sahakari Patsanstha, 2013(13) R.C.R. (Criminal) 462.**

4. Learned trial Judge declined the said prayer vide order, Annexure P/3 on three grounds, firstly, that this plea has been taken at a belated stage after a period of more than three years; secondly, the presence of the parties was duly recorded in the relevant zimni order and thirdly, even if for the sake of arguments, the documents have been wrongly tendered or exhibited, as per settled proposition of law, mere exhibiting a document does not mean that it is admissible in evidence and the admissibility of such documents shall be scanned at the time of arguments.

5. As the above order makes it ample clear that even despite above observations, the Court had left the objection regarding exhibition of documents to be open to be decided at the time of final arguments, as such, there was no ground for allowing the de-exhibition of the documents at this stage or allowing the cross-examination of witness thereby further

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delaying the proceedings of the matter. Learned Sessions Judge, Ludhiana in his its detailed order dated 24.07.2019 (Annexure P/10) has also observed the above facts that question of exhibition of documents was left open to be decided at the time of final hearing and dismissed the revision petition.

6. In view of the above, the facts of the present case are certainly distinguishable from the facts of judgment in **Shri Gopal Shankarrao Deshmukh's case (supra)**, referred to by learned counsel for the petitioner.

7. Resultantly, the present petition is without any merit because the question of admissibility of documents has been kept open to be decided at the time of final arguments of the case and as such, the same stands dismissed *in limine* . However, it is made clear that parties shall be well within their rights to argue on the point of admissibility/exhibition of documents at the time of final arguments and the Court shall also decide this issue while deciding the main case.

(SHEKHER DHAWAN)
JUDGE

August 26 , 2019

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes