

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46628-2019
Date of Decision: 01.11.2019

Varinder Kumar

.....Petitioner

Versus

Darshan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Neeraj Madaan, Advocate,
for the petitioner.

Harnaresh Singh Gill, J.

In the present petition challenge is to the order dated 12.09.2019 (Annexure P-7) passed by the learned Chief Judicial Magistrate, Fazilka, vide which application filed by the petitioner-accused under Section 65 of the Indian Evidence Act, seeking permission to lead secondary evidence for proving affidavit and cancellation of agreement dated 18.05.2010, has been dismissed.

During the pendency of complaint filed by the respondent-complainant under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'N.I.Act'), petitioner-accused, Varinder Kumar filed an application dated 31.07.2019 (Annexure P-6) under Section 65 of the Evidence Act, seeking permission to lead secondary evidence for proving affidavit and cancellation of agreement dated 18.05.2010 already placed on record as Mark DA and DB, respectively, as he had money dealings with the respondent-complainant since 2009-2010 and

the respondent had received cheque from the petitioner just as security papers. On 18.05.2010, the petitioner paid ₹80,000/- to the respondent/complainant and in lieu of that, the respondent executed an affidavit in favour of the petitioner. The respondent through his son Harmeet Singh had got cancelled the documents but during the course of evidence, the respondent had denied execution of the documents.

I have heard learned counsel for the petitioner and I am not inclined to interfere with the order dated 12.09.2019.

It is argued by the learned counsel for the petitioner that during cross-examination, the respondent had denied financial dealings and also execution of any document with the petitioner/accused before 11.08.2016, whereas the petitioner was having financial dealings with the respondent as per the documents/affidavit dated 18.05.2010 and cancellation deed dated 18.05.2010. However, the original copies of said documents were lost which could not be traced out and the photocopies are to be proved by way of secondary evidence. In this regard, the petitioner has raised a specific plea in the grounds as contained in Para No.8(ii) of the paper-book, which is reproduced hereinbelow for ready reference:

(ii) That the original copies of the above said documents were lost and could not be traced despite best efforts and but the photocopies of the above said documents are available with the petitioner and photocopies are placed on record and duly marked by the learned trial court during cross-examination of the complainant.

The above said documents are being a photocopies of the original, therefore, these documents are needs to prove by leading secondary evidence with due permission of the court in view of the law laid down in Indian Evidence Act. It is again relevant to mention here that the complainant also filed his affidavit in support to the said application and deposed that the original documents were lost and could not be traced despite of best efforts till today.”

Learned counsel for the petitioner has relied upon the judgment titled as '**Preeti Arora vs. Madhu Arora and others** 2017(2) L.A.R. 530 wherein it has been held that in case of loss of original document, the party should be granted leave to lead secondary evidence and whether a party seeking leave of the Court for leading secondary evidence ultimately succeeds in proving the document or not is a question of fact which depends upon the evidence.

The present complaint has been filed on the basis of cheque, amounting to ₹4 lakh, issued by the petitioner on 07.10.2016 and the same got dishonoured on 14.10.2016, but the present controversy pertains to the year 2009-2010 and the document i.e. cancellation of agreement was executed on 18.05.2010. Thus, this fact proves that the respondent and the petitioner had money transactions with each other.

To my mind, if the original documents were lost, then the petitioner should have made a complaint to the competent authority at that very time that his documents had been lost,

but there is no such assertion. Having not followed such course, the claim of the petitioner regarding lost of the documents, does not appeal to the common prudence and hence cannot be made basis of allowing the application to lead the secondary evidence.

This Court in ***M/s Parkash Chand Kapoor Chand Vs. Inderjit Singh and others, 2006(3) R.C.R. (Civil) 700***, while dilating upon the provisions of Section 65 of the Evidence Act, has held that the original document is always the best and primary evidence. However, if the secondary evidence is sought to be produced, the same is to be proved in accordance with the procedure prescribed i.e. the circumstances for leading the secondary evidence must be pleaded and should be genuine and the circumstances leading to unavailability of the primary evidence must be established. In ***M/s Parkash Chand Kapoor Chand (supra)***, it was held as under:

“6. XXXX

In terms of the above, it is evident that the secondary evidence may be given of the existence, condition or contents of a document in the cases enumerated above. In terms of clause (c) thereof it is provided that secondary evidence may be given when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time. The principle underlying the provisions of [Section 65](#) of the Evidence Act is that the best evidence that is available should be produced. The original document is always the best and primary evidence. [Section 65](#) provides an alternative method of

proving the contents of a document which for various reasons cannot be produced. However, it is liable to be shown that the original document of which secondary evidence is sought to be produced was in existence. Besides, secondary evidence is admissible when it is shown that the primary evidence which is the original document was in existence. Therefore, before secondary evidence of a document can be led and proved, the original document and its loss is liable to be proved. In the case in hand, the existence of the document i.e. the agreement to sell dated 13.6.1995 has not been shown to exist or accounted for anywhere and it is only for the first time in the written statement dated 10.8.2000 that it has been stated by defendants No. 2 and 3 that Inderjit Singh (defendant No. 1) had executed an agreement to sell dated 13.6.1995. XXXX.”

In view of the above, I do not find any much in the present petition and thus the same is dismissed.

(HARNARESH SINGH GILL)
JUDGE

01.11.2019
parveen kumar

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No