

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-52289-2019
Date of Decision : 07.12.2019

Ram Singh

.....Petitioner

Versus

M/s Gurjinder Singh Gurjeet Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Jaswinder Singh Grewal Advocate
for the petitioner.

ARUN KUMAR TYAGI, J. (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of order dated 03.09.2019 (**Annexure P-4**) passed by learned Judicial Magistrate Ist Class, Abohar in **Complaint Case No.RBT-31-2 dated 15.11.2018 registration No.1930/2018 titled 'M/s Gurjinder Singh Vs. Ram Singh'** whereby application filed under Section 311 of the Cr.P.C. by the petitioner-accused to further cross-examine respondent-complainant, regarding over-writing in Bahi entry Ex.C-6 was dismissed and order dated 05.11.2019 (**Annexure P-5**) passed by learned Additional Sessions Judge, Fazilka in **Criminal Revision No.194/2019 titled 'Ram Singh Vs. M/s Gurjinder Singh Gurjeet Singh'** dismissing revision against the same.

Briefly stated the facts giving rise to filing of the present petition are that the respondent-complainant filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') alleging that the petitioner-accused had opened a current and running account with the complainant-firm and amount of

Rs.2,83,255/- as principal and Rs.32,345/- as interest totalling Rs.6,31,600/- was due against the petitioner-accused who issued cheque No.064597 dated 25.09.2018 for Rs.3,15,600/- drawn on Union Bank of India Branch, Abohar which was on presentation dishonoured with remarks 'Insufficient Funds' and the petitioner-accused did not pay the amount within the prescribed period despite service of legal notice.

After summoning of the petitioner-accused, evidence of the complainant was recorded. While the case was fixed for examination of the petitioner-accused under Section 313 of the Cr.P.C., the petitioner-accused filed the application under Section 311 of the Cr.P.C. for further cross-examining the complainant with reference to re-writing/cutting in Bahi entry Ex.C-6 showing the outstanding balance of Rs.6,31,200/-. The said application was dismissed by learned Judicial Magistrate Ist Class, Abohar and revision filed by the petitioner-accused was also dismissed by learned Additional Sessions Judge, Fazilka.

Feeling aggrieved from the same, the petitioner has filed present petition under Section 482 of the Cr.P.C. for setting aside the above-said order and allowing the application of the petitioner for recalling the complainant for further cross-examination.

I have heard learned Counsel for the petitioner and perused the relevant record.

Learned Counsel for the petitioner has submitted that during his examination the complainant was carrying huge bulk of Khata running into number of pages which was shown to the petitioner first time in the Court and his Counsel was asked to cross-examine the

complainant on the very same day without granting the petitioner opportunity to inspect the same. Due to the bulky record, the complainant was not properly cross-examined. The petitioner came to know about the over-writing later. Application filed by the petitioner-accused has been wrongly dismissed by learned Judicial Magistrate Ist Class, Abohar and revision petition has been wrongly dismissed by learned Additional Sessions Judge, Fazilka. The impugned orders are liable to be set aside.

On consideration of the submissions made by learned Counsel for the petitioner and perusal of the record, I am of the considered view that the petition is devoid of any merit and is liable to be dismissed even without notice to the respondent.

Section 311 of the Cr.P.C., which empowers the Court to summon material witness or examine person present, reads as under:-

“311. Power to summon material witness, or examine person present-

Any court may, at any stage of any inquiry, trial or other proceedings under this code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.”

In the present case, the petitioner-accused has claimed that the respondent-complainant could not be cross-examined with reference to the over-writing/cutting in Bahi entry Ex.C-6 whereby amount of Rs.6,31,200/- was shown to be due but the petitioner-accused was

given due opportunity to cross-examine the respondent-complainant and there is no plausible explanation for omission to cross-examine the respondent-complainant in respect of the overwriting/cutting in the bahi entry detectable on bare perusal which must be deemed to be in the knowledge of the petitioner-accused at the time of cross-examination of the respondent-complainant. Consequently, no ground for recalling the respondent-complainant for further cross-examination was made out. Even otherwise, it may be observed that in the complaint the complainant had claimed amount of Rs.3,15,600/- to be due against the petitioner-accused. The complainant has not made any claim regarding amount of Rs.6,31,200/- being due against the petitioner-accused. Therefore, any cross-examination with respect to the overwriting/cutting in the Bahi entry of amount of Rs.6,31,200/- will not be of any relevance to adjudication of the matter of subsisting liability of the petitioner-accused in respect of the amount of Rs.3,15,600/- claimed by the respondent-complainant and denied by the petitioner-accused to be due against the petitioner-accused.

In the facts and circumstances of the case, recalling of the respondent-complainant for his further cross-examination will not be necessary either in the interest of justice or for just decision of the complaint case particularly so when the petitioner-accused can produce evidence in his defence in denial of his subsisting liability challenging correctness of the Bahi entry.

It follows from the above discussion that the impugned orders do not suffer from any legal infirmity so as to warrant quashing/setting aside of the same in exercise of power under Section

438 of the Cr.P.C. as the application for recalling of the respondent-complainant for his further cross-examination has been rightly dismissed.

Accordingly, the present petition, being devoid of any merit, is hereby dismissed.

07.12.2019

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No