

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

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**CRM-M- 6364-2020
Date of decision: 13.02.2020**

Rakesh Kumar Garg

.....Petitioner

Versus

Surinder Pal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Mukesh Garg, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

1. 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 orders dated 16.12.2019 (Annexure P-11) and 15.01.2020 (Annexure P-12) passed by learned Judicial Magistrate First Class, Patiala in complaint case No. COMA-1350-2017 titled as Surinder Pal Singh versus Rakesh Kumar Garg filed under Section 138 of the Negotiable Instruments Act, 1881(for short 'the N.I.Act') .

2. Briefly stated the facts giving rise to filing of the present petition are that Surinder Pal Singh filed above said complaint against the petitioner accused on the averments that accused took friendly loan of Rs.3,85,000/- and executed an affidavit in this regard and in discharge of subsisting liability the accused issued cheque No. 016786 dated 31.01.2017 for amount of Rs.3,85,000/- drawn on ICICI Bank, Dhuri Branch near BDO Office, Dhuri Pind Road, Dhuri, District Sangrur which was on presentation dishonoured with remarks “Funds Insufficient” and the accused failed to pay the amount of the cheque despite service of legal notice dated 08.03.2017. After recording of

preliminary evidence, the accused was summoned to face trial and case was taken up for recording evidence of the complainant. After examination of the complainant affidavit of Krishan Gopal Jain was tendered as CW-2. The accused filed an application objecting to examination of CW-2 Krishan Gopal Jain on the ground that he was not cited in the list of witnesses. The application was opposed by the complainant. However the same was allowed by learned Judicial Magistrate Ist Class vide order dated 18.09.2019 and examination-in-chief of CW2 Krishan Gopal Jain was discarded. Subsequently the complainant filed application under Section 311 of the Cr.P.C. for allowing the complainant to lead additional evidence and application under Section 65 of the Indian Evidence Act, 1872 for permission to lead secondary evidence of the agreement. The applications were opposed by the accused. However, the applications were allowed vide order dated 16.12.2019 (Annexure P-11) whereby the complainant was allowed to produce the secondary evidence of the agreement and to examine Krishan Gopal Jain, Renu Jain and stamp vendor.

3. Feeling aggrieved the petitioner accused has filed the present petition.

4. Learned Counsel for the petitioner has submitted that on application filed by the petitioner, allowed vide order dated 18.09.2019, examination-in-chief of CW2 Krishan Gopal Jain was discarded. The learned Judicial Magistrate Ist Class was not empowered to review/recall the order and could not therefore allow examination of Krishan Gopal Jain and impugned order allowing application under Section 311 of the Cr.P.C. suffers from material illegality. Learned

Counsel for the petitioner has further argued that in reply filed to application under Section 65 of the Indian Evidence Act, 1872 the petitioner admitted that the original of the agreement is in his power and possession and the same will be produced during cross-examination or as and when so directed by the Court. In view of the reply application for grant of permission to produce secondary evidence could not be allowed and impugned order allowing the said application suffers from material illegality in this regard also. Learned Counsel for the petitioner has accordingly submitted that the impugned orders may be quashed.

5. On consideration of the submissions made by learned Counsel for the petitioner and material on record, I am of the considered view that the petition is without any merit and is liable to be dismissed.

6. In the complaint the respondent-complainant had specifically mentioned that at the time of taking of friendly loan the petitioner-accused had executed an agreement. In his reply, filed to application under Section 65 of the Indian Evidence Act, 1872 the petitioner-accused had admitted that the said agreement is in possession and power of the petitioner-accused. However the petitioner-accused did not produce the said agreement before the Court. Section 65 (A) permits secondary evidence to be given as to the existence, condition or contents of documents when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved. Since the petitioner did not produce the original agreement, learned Judicial Magistrate Ist Class was perfectly justified

in allowing secondary evidence of the said agreement to be produced before the Court and the impugned order does not suffer from any illegality in this regard.

7. Section 311 of the Cr.P.C. empowers any Court at any stage of any enquiry trial or other proceeding under the Cr.P.C to 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. The second part of Section 311 of the Cr.P.C imposes an obligation on the Court to summon and examine or recall and re-examine any such person whose evidence appears to be essential to the just decision of the case.

8. The object of criminal trial is to meet out justice and to convict the guilty and protect the innocent. The criminal trial has to be a search for the truth and not a bout for technicalities. In ***P. Sanjeeva Rao Vs. State of A.P. : 2012(3) R.C.R.(Criminal) 653*** Hon'ble Supreme Court observed as under:-

15. Discovery of the truth is the essential purpose of any trial or enquiry, observed a three-Judge Bench of this Court in ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria through LRs., 2012(2) Recent Apex Judgments (R.A.J.) 6 : 2012(2) R.C.R.(Civil) 441 : 2012 (3) SCALE 550***. A timely reminder of that solemn duty was given, in the following words :

"What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice."

9. In the present case the complainant examined Krishan Gopal Jain as CW-2 by tendering his affidavit in his examination-in-chief without seeking permission of the Court as his name was not

mentioned in the list of witnesses. The affidavit of CW-2 Krishan Gopal Jain tendered as part of his examination-in-chief was rightly discarded by the Court on the application filed by the petitioner. However, subsequently on application filed by the respondent-complainant, learned Judicial Magistrate Ist Class allowed examination of CW2-Krishan Gopal Jain, Renu Jain and stamp vendor vide impugned order dated 15.01.2020. Examination of Krishan Gopal Jain, Renu Jain and stamp vendor is essential for proving execution of the agreement in question and is also essential for just and proper decision of the case. In view of the provisions of Section 311 of the Cr.P.C. and facts and circumstances of the case, learned Judicial Magistrate Ist Class was justified in allowing the application. Summoning of Krishan Gopal Jain did not amount to review or recalling of the earlier order and the application was not liable to be dismissed on this ground. The impugned order does not suffer from any material illegality in this regard also.

10. It may also be observed here that due to being overburdened and also because of the tendency of the parties to give evasive replies at all stages of the case, generally the Courts do not have recourse to admission denial of documents at the initial stage which can save the parties the inconvenience and expense of producing evidence for proving even facts and documents which are either admitted or can not be disputed in view of the law in force. In the present case also the learned Judicial Magistrate First Class, Patiala did not have recourse to admission denial of the documents. Once the petitioner-accused has admitted the original of the agreement to be in his power and

possession, the petitioner-accused must be considered to have thereby impliedly admitted execution of the above said agreement also and in the face of such implied admission of the execution thereof not only the objection of the petitioner-accused to the impugned orders will be wholly unjustified but even the examination of CW-2 Krishan Gopal Jain, Renu Jain and stamp vendor for proving the agreement will be wholly unnecessary. Even approaching this Court for quashing of the impugned orders is nothing but an exercise in luxury of litigation.

11. In these facts and circumstances of the case, the petition being devoid of any merit is hereby dismissed.

13.02.2020

Rajeev (rvs)

(ARUN KUMAR TYAGI)
JUDGE

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