

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

**CRM-M-26059-2016(O&M)
Date of decision:-23.1.2020**

Sat Pal Verma

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Chander Shekhar, Advocate for
Mr.Lovkesh Gupta, Advocate
for the petitioner.

Ms.Amarjit Kaur Khurana, DAG, Punjab.

Mr.N.S. Sodhi, Advocate
for respondent No.2.

H.S. MADAAN, J.

Complainant Davinder Kumar Gupta had brought a complaint under Section 138 of Negotiable Instruments Act against accused Sat Pal Verma on the allegations that there had been friendly relations between two of them for the last more than 20 years and accused had raised loans from him from time to time i.e. Rs.1,00,000/- through cheque dated 13.1.2011, Rs.1,20,000/- on 19.1.2011 and lastly Rs.60,000/- on 8.3.2013 on the pretext that he was to get his house redeemed from the bank. In order to discharge that liability the accused had issued a post-dated cheque bearing No.502272 dated 15.3.2013 in

the sum of Rs.3,80,000/- drawn on Punjab National Bank, Basti Nau Branch, Jalandhar in favour of the complainant. However, on presentation, the cheque was returned uncashed by the bank with a memo having remarks "Funds Insufficient". Thereafter, the complainant had got issued a legal notice dated 15.4.2013 upon the accused calling upon him to make payment of the cheque amount within 15 days from the date of receipt of notice but to no effect. As such the complaint was filed in the Court of Judicial Magistrate Ist Class, Jalandhar.

After recording of preliminary evidence, the accused was summoned and he put in appearance. Notice of accusation was served upon him. The complainant led evidence. Statement of accused under Section 313 Cr.P.C. was recorded. He led evidence in defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Jalandhar vide judgment dated 6.4.2015 convicted the accused for an offence under Section 138 of Negotiable Instruments Act and vide order of the even date sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- and in default of making payment of fine to undergo further rigorous imprisonment for a period of three months.

That judgment of conviction and sentence left the accused aggrieved and he had filed an appeal before the Court of Sessions, which was assigned to Additional Sessions Judge, Jalandhar. During the pendency of the appeal, the accused filed an application for grant of permission to adduce further evidence and to recall the complainant for further cross-examination contending that contrary to what has been pleaded by the complainant in the complaint, the complainant is not a

man of means and he has no source to advance any such loans. He had not advanced any loan to the accused. The details of several cases filed by the complainant have been given in the application stating that the appellant had applied for obtaining certified copies of the documents with regard to said litigation during pendency of the appeal and such copies have been delivered to him just now, therefore the application be allowed.

The complainant opposed the said application praying for its dismissal.

Vide impugned order dated 2.5.2016, the application was dismissed.

The appellant/accused has approached this Court challenging the said order by way of filing the present petition under Section 482 Cr.P.C., notice of which was issued to the State and complainant, who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Section 391 Cr.P.C. provides that the Appellate Court may take further evidence or direct it to be taken. In terms of said provision while dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

In the present case the Appellate Court has nowhere observed that it requires any further evidence for just decision of the

case, rather the application has been dismissed with the observation that before the trial Magistrate, after closure of evidence of the complainant and after recording of statement of accused under Section 313 Cr.P.C., the case was fixed for defence evidence of the accused. The accused availed of 14 effective opportunities but except for examining two witnesses in defence, he did not adduce any evidence, which was closed on 24.3.2015 by the accused himself. Even otherwise, the appellant had ample opportunity before the trial Court to get the certified copies of the documents/statements of the connected case. It came to the conclusion that the application was just a delaying tactic. Furthermore, while being examined under Section 313 Cr.P.C., the accused had taken up a plea that the complainant had misused the cheque given by him.

The order passed by learned Additional Sessions Judge, Jalandhar is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Section 482 Cr.P.C. deals with inherent powers of the High Court. No ground is there to exercise such powers in this case since the impugned order cannot be said to be abuse of process of the Court and no interference therewith in any manner is called for.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

23.1.2020
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No