

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-39290-2017**

Date of decision: February 24, 2020

Sanjeev Kumar

....Petitioner

Versus

Dharamvir Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWANPresent: Mr. Aman Bansal, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 19.7.2017 passed by the trial Court as well as the order dated 7.9.2017 passed by the revisional Court vide which the application filed by the complainant-petitioner under Section 311 Cr.P.C. was dismissed.

Brief facts of the case are that the petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act on account of dishonouring of a cheque of Rs.5 Lacs. The petitioner, when filed the complaint, has also attached the list of witnesses, in which it is stated that he wants to examine a Clerk of Punjab and Sind Bank, Branch Badrukhan, District Sangrur where the cheque was presented and dishonoured.

Counsel for the petitioner submits that inadvertently, the said witness could not be examined when the petitioner-complainant was leading his evidence which was closed on 21.4.2017 and immediately, thereafter, on 9.5.2017 he moved an application under Section 311 Cr.P.C. for examining the concerned Clerk of the Bank, alongwith the entry in the register regarding receiving of the cheque No.484023 dated 10.6.2015 issued by the State of Bank of India, Branch, Sangrur. The trial Court vide its impugned order dated 19.7.2017 dismissed the application on the ground that though the name of the witness is mentioned in the list of witnesses yet as this

witness was not examined in the preliminary evidence and when the accused appeared after serving notice to him and the case was fixed for complainant evidence, 05 opportunities were granted but the said witness was not examined. Counsel for the petitioner has submitted that due to oversight and the witness could not be examined and the trial Court while allowing the application could have compensated the respondent-accused by imposing the costs as no prejudice will be caused as the proposed evidence will enable the trial Court to come to a just conclusion regarding the manner in which the cheque was dishonoured.

A perusal of the last two orders show that no one has appeared for the respondent. Even today, there is no representation on behalf of the respondents.

After hearing counsel for the petitioner, I find merit in the present petition.

This witness now sought to be produced as an additional witness, who has been duly named in the list of witnesses attached with the complaint. The evidence of the petitioner was closed and the petitioner without any delay immediately moved the application within a period of 30 days and the trial Court though noticed that this witness is named in the list of witnesses yet declined the application only on the ground that 05 opportunities were granted to the petitioner to conclude the evidence but he has not examined this witness and even the diet money for summoning the witness was not deposited.

This witness is a relevant witness with regard to the presentation of the cheque and the return memo vide Ex.C-2 vide which the cheque was returned on account of 'insufficient fund' and, therefore, the statement of this witness will go to the root of the case and enable the trial Court to come to a just and fair conclusion.

The revisional Court has dismissed the revision primarily on the ground that the same is not maintainable and, there was no adjudication on the merits.

Accordingly this petition is allowed, order dated 19.7.2017 passed by the trial Court as well as the order dated 7.9.2017 passed by the revisional Court are set aside and the petitioner is granted one effective opportunity to produce his witness at his own responsibility. This will, however, be subject to payment of costs of Rs.10,000/- to be paid to the respondent-accused on account of delaying the proceedings.

In case, the cost is not accepted by the accused, the same will be deposited with the District Legal Services Authority, Sangrur.

The petitioner is directed to appear before the trial Court on 19.3.2020.

February 24, 2020
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No