IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44016-2016 (O&M)
Date of decision: 25.02.2020

Vijay Kumar Ghai **...Petitioner**

Versus

Pritpal Singh Babbar **...Respondent**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Aalok Jagga, Advocate
for the petitioner.

Mr. M. S. Rana, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. *(Oral)*

Prayer in this petition is for setting aside the orders dated 27.10.2016 (Annexure P-7) and 21.11.2016 (Annexure P-10), passed by the trial Court in ***Complaint No. 8341/2013 dated 21.03.2012*** titled as ***Pritpal Singh Babbar vs. Vijay Kumar Ghai***, vide which an application filed by the petitioner/accused under Section 311 Cr.P.C. was dismissed and the prayer of the petitioner to produce on record the income tax returns of the complainant/respondent was declined.

Brief facts of the case are that respondent/complainant has filed a complaint under Section 138 of the N. I. Act against the petitioner on account of dishonouring of a cheque of Rs. 11 Lakh, which was allegedly given by the petitioner for repaying the said loan.

Learned counsel for the petitioner has submitted that as per the allegations in the complaint, the complainant has stated that he had advanced a loan of Rs. 11 Lakh to the petitioner/accused on 05.03.2008 by way of a demand draft and the petitioner was paying the interest of Rs. 8,250/- per month to clear the loan amount by February, 2012. It is further stated in the complaint that the petitioner was regularly paying the quarterly interest of Rs. 24,750/- to the complainant.

Learned counsel for the petitioner further submits that when the complainant appeared as his own witness as PW-1, in his cross-examination, he placed on record the photocopy of his ITRs for the years 2012-13, 2013-14, which are marked as Mark D3 to D6.

Learned counsel referred to cross-examination dated 21.01.2015, wherein the complainant has stated that he has been disclosing his income in the tax returns regarding interest received by him from the petitioner/accused, however, he has not produced the copy of the ITRs in Court and have only attached copy of ITRs with the complaint.

Learned counsel further argued that thereafter, the statement of the petitioner/accused was recorded under Section 313 Cr.P.C., in which he stated that he has taken a loan of Rs. 11 Lakh and has given a blank security cheque in the year 2008 and had paid Rs. 3,05,250/- to the complainant.

It is further submitted that the petitioner has led his defence evidence, in which he has attached a copy of the ledger account of the complainant, wherein it has been shown that petitioner has been the installments.

Learned counsel for the petitioner further submitted that under a bona fide impression that the complainant has already placed on record the ITRs for the relevant period as Mark D3 to D6, he could not verify whether the same relates to the relevant period as in this case, the relevant period is 2008-09, 2009-10, 2010-11 and 2011-12. It is further stated that the petitioner has obtained the ITRs of the complainant for the aforesaid period and found that in the column of 'income received from interest', it is stated to be 'nil' in all the ITRs.

Learned counsel has, thus, argued that this fact demolishes the case of the complainant as while appearing as PW-1, the complainant has stated that he has shown the interest received from the petitioner in his tax returns, whereas all the aforesaid ITRs of the relevant period do not reflect receiving of any interest and it supports the case of the petitioner that he has obtained an interest free loan from the complainant and in fact he was paying the installments towards the principal amount and not towards interest.

Learned counsel for the petitioner further submitted that immediately on closing the evidence, the petitioner moved an application under Section 311 Cr.P.C. for granting permission to lead additional evidence by way of producing the ITRs for the years 2008-09, 2009-10, 2010-11 and 2011-12, however, the said application was dismissed by passing the impugned order dated 27.10.2016 only with the observations that ITRs are already on record as Mark D3 to D6 and there is no need to allow the application, whereas this finding of the trial Court is factually incorrect.

Learned counsel for the petitioner further argued that even while allowing the application partly qua summoning a Clerk from State Bank of India, it was ordered that the petitioner will deposit a cost of Rs. 10,000/-, however, the same could not be deposited and when the petitioner moved an application that time be extended for examination of the said witness, the same was declined, vide impugned order dated

21.11.2016.

Learned counsel submitted that in fact on account of demonitization on 08.11.2016, the petitioner could not deposit the cost of Rs. 10,000/- and thereafter, when he made a request before the trial Court for extension of time to do the same, he had already got prepared a demand draft but the request was not accepted.

Learned counsel for the petitioner has next argued that the powers of the trial Court under Section 311 Cr.P.C. are wide enough and where it comes on record that the proposed evidence is necessary for a fair and just decision of trial, the same can be allowed at any stage of trial.

In reply, learned counsel for the respondent/complainant has not disputed the factual position. It is also not disputed that the ITRs, pertaining to the years 2008-09, 2009-10, 2010-11 and 2011-12, i.e. prior to presentation of the cheque in dispute, are not on record. It is also not disputed that vide impugned order dated 27.10.2016, the trial Court has allowed the summoning of a Clerk of State Bank of India but this witness could not be examined as the petitioner/accused had not paid the cost of Rs. 10,000/- as imposed by the trial Court.

Learned counsel for the respondent has, however, argued that the petitioner is unnecessarily delaying the proceedings as the complaint is pending since 2013.

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

The finding recorded by the trial Court in the impugned order dated 27.10.2016 that the ITRs Mark D3 to D6 are pertaining to relevant period is factually incorrect as these are the ITRs for the years 2012-2013 and 2013-14, whereas, as per the case of the complainant, the loan was advanced in the year 2008 and the cheque was presented in 2012 and, therefore, as per the averments made in the complaint and in the statement of the complainant that the petitioner/accused was quarterly paying the amount of interest, which on the face of it, is not reflected in the ITRs for the years 2008-09, 2009-10, 2010-11 and 2011-12. Therefore, the impugned order dated 27.10.2016 is liable to be set aside.

Further, the observations made by the trial Court in the impugned order dated 21.11.2016, whereby the petitioner was not granted one more opportunity to deposit the cost of Rs. 10,000/- imposed for summoning the Clerk of State Bank of India are also not justified as it is very much believable that the petitioner could not be able to deposit the said cost on account of declaration of demonitization on 08.11.2016 resulting into cash crunch and paucity of cash even in banks.

Accordingly, the present petition is allowed and impugned orders 27.10.2016 (Annexure P-7) and 21.11.2016 (Annexure P-10) are set aside.

The petitioner is permitted to summon the record relating to the ITRs of the complainant for the years 2008-09, 2009-10, 2010-11 and 2011-12.

However, this order will be subject to payment of additional costs of Rs. 25,000/- to be paid to the complainant by the petitioner by way of a demand draft.

The petitioner is also permitted to summon and examine the said Clerk of State Bank of India, subject to payment of costs of Rs. 10,000/- to the complainant within a period of 30 days from today, in terms of order dated 27.10.2016.

However, considering the fact that the complaint pertains to the year 2016 and even this petition is pending since long, it would be appropriate to direct the trial Court to conclude the trial expeditiously, preferably within a period of six months.

Hence, it is directed that the trial Court will grant one effective opportunity, i.e. when the witnesses are present, to the petitioner to lead his entire evidence and conclude the trial expeditiously, preferably within a period of six months from the date of receipt of a certified copy of this order.

25.02.2020 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*